

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(1) INTRODUCTION/301. Introduction.

LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)

1. REGULATION OF THE LEGAL PROFESSIONS

(1) INTRODUCTION

301. Introduction.

The Legal Services Act 2007, much of which is not yet in force¹, makes significant changes to the regulation of persons who carry on certain legal activities². The Act creates a set of regulatory objectives³ to be followed by those with regulatory functions⁴ and establishes two new regulatory bodies, the Legal Services Board and the Office for Legal Complaints, to oversee the regulation of the legal services sector⁵.

Whilst the Act permits the existing regulators of individual legal professions to continue in a regulatory capacity as approved regulators⁶ there is a requirement for them to ensure that any functions of regulation are not prejudiced by any functions relating to representation⁷.

1 The Legal Services Act 2007 is mainly brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law the Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, and the Legal Services Act 2007 (Commencement No 2 and Transitory Provisions) Order 2008, SI 2008/1436 (amended by SI 2008/1591) had been made. As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq. The following applies where, by virtue of an amendment made to an enactment by the Legal Services Act 2007, a function of the Secretary of State is transferred to the Lord Chancellor (a 'transferred function'): Sch 22 para 18(1), (2). Any subordinate legislation made by the Secretary of State in exercise of a transferred function is to have effect as if made or done by the Lord Chancellor and, so far as is appropriate in consequence of the transfer, anything else done by the Secretary of State in exercise of a transferred function is to be treated as if done by the Lord Chancellor: Sch 22 para 18(3), (4).

2 See the Legal Services Act 2007 Pt 2 (ss 2-11); and PARAS 303, 311, 323-326.

3 As to the regulatory objectives see PARA 302.

4 For the purposes of the Legal Services Act 2007 references to the 'regulatory functions' of an approved regulator are to any functions the approved regulator has under or in relation to its regulatory arrangements or in connection with the making or alteration of those arrangements: s 27(1).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303-326. As to the Office for Legal Complaints see s 114; and PARA 442 et seq.

6 See PARA 358 et seq.

7 As to the making of rules to ensure that the representative functions of an approved regulator do not prejudice the exercise of its regulatory functions see the Legal Services Act 2007 s 30(1); and PARA 374. When acting in its capacity as an approved regulator the Legal Services Board must ensure an appropriate separation of its activities: see s 62(4); and PARA 370.

UPDATE

301 Introduction

NOTE 1--Further commencement orders made: SI 2008/3149, SI 2009/503, SI 2009/1365, SI 2009/3250.

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302. Regulatory objectives.

The Legal Services Act 2007 sets out the following eight 'regulatory objectives' to guide the Legal Services Board¹, the approved regulators² and the Office for Legal Complaints³ in exercising their functions⁴. The 'regulatory objectives' are:

- 1 (1) protecting and promoting the public interest⁵;
- 2 (2) supporting the constitutional principle of the rule of law⁶;
- 3 (3) improving access to justice⁷;
- 4 (4) protecting and promoting the interests of consumers⁸;
- 5 (5) promoting competition in the provision of services provided by authorised persons⁹ (including services which do not involve the carrying on of activities which are reserved legal activities)¹⁰;
- 6 (6) encouraging an independent, strong, diverse and effective legal profession¹¹;
- 7 (7) increasing public understanding of the citizen's legal rights and duties¹²;
- 8 (8) promoting and maintaining adherence to the professional principles¹³.

1 See the Legal Services Act 2007 s 3(2); and PARA 311. As to the Legal Services Board see s 2; and PARAS 303-326.

2 See the Legal Services Act 2007 s 28(2); and PARA 372. As to the meaning of 'approved regulator' see PARA 358. See also s 176; and PARA 384.

3 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442 et seq.

4 See the Legal Services Act 2007 s 116(2); and PARA 446.

5 Legal Services Act 2007 s 1(1)(a).

6 Legal Services Act 2007 s 1(1)(b).

7 Legal Services Act 2007 s 1(1)(c).

8 Legal Services Act 2007 s 1(1)(d). 'Consumers' means persons:

- 1 (1) who use, have used or are or may be contemplating using, services provided by a person who is an authorised person in relation to an activity which is a reserved legal activity and any other services provided by a person which consist of or include a legal activity carried on by, or on behalf of, that person (s 207(1), (2));
- 2 (2) who have rights or interests which are derived from, or are otherwise attributable to, the use of such services by other persons (s 207(1)); or
- 3 (3) who have rights or interests which may be adversely affected by the use of such services by persons acting on their behalf or in a fiduciary capacity in relation to them (s 207(1)).

Until s 13 (see PARA 509) comes into force the reference to an authorised person in the definition of 'consumers' is to be treated as a reference to a person who will be an authorised person on the coming into force of s 13: Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, art 7(1). At the date at which this volume states the law no order had been made bringing s 13 into force. As to the meaning of 'reserved legal activities' see PARA 512.

For the purpose of the definition of 'consumers':

- 4 (a) if a person is carrying on an activity in his capacity as a trustee, the persons who are, have been or may be beneficiaries of the trust are to be treated as persons who use, have used or are

or may be contemplating using services provided by the trustee in the trustee's carrying on of that activity (s 207(3)(a)); and

- 5 (b) a person who deals with another person in the course of that person carrying on of an activity is to be treated as using services provided by him in carrying on that activity (s 207(3)(b)).

9 For these purposes 'authorised persons' means authorised persons in relation to activities which are reserved legal activities: Legal Services Act 2007 s 1(4). As to the meaning of 'authorised person' in relation to activities which are reserved legal activities, see s 18; and PARA 515. Until the coming into force of s 13 (see PARA 509) a reference to an authorised person in s 1 is to be treated as a reference to a person who will be an authorised person on the coming into force of s 13: Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, art 7(1).

10 Legal Services Act 2007 s 1(1)(e), (2). As to the meaning of 'reserved legal activity' see PARA 512.

11 Legal Services Act 2007 s 1(1)(f).

12 Legal Services Act 2007 s 1(1)(g).

13 Legal Services Act 2007 s 1(1)(h). The 'professional principles' are:

- 6 (1) that authorised persons should act with independence and integrity (s 1(3)(a));
- 7 (2) that authorised persons should maintain proper standards of work (s 1(3)(b));
- 8 (3) that authorised persons should act in the best interests of their clients (s 1(3)(c));
- 9 (4) that persons who exercise before any court a right of audience or conduct litigation in relation to proceedings in any court by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice (s 1(3)(d)); and
- 10 (5) that the affairs of clients should be kept confidential (s 1(3)(e)).

As to the meaning of 'right of audience' and 'conduct litigation' see PARA 512 notes 3, 4. For the purposes of the Legal Services Act 2007 (except where the context otherwise requires) 'court' includes:

- 11 (a) a tribunal that is (to any extent) a listed tribunal for, or for any of, the purposes of the Tribunals, Courts and Enforcement Act 2007 Sch 7 (functions etc of Administrative Justice and Tribunals Council) (Legal Services Act 2007 s 207(1));
- 12 (b) a court-martial (s 207(1));
- 13 (c) a statutory inquiry within the meaning of the Tribunals and Inquiries Act 1992 s 16(1) (Legal Services Act 2007 s 207(1));
- 14 (d) an ecclesiastical court (including the Court of Faculties) (s 207(1)).

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(2) LEGAL SERVICES BOARD

(i) Establishment and Constitution

303. The Legal Services Board.

There is to be a body corporate called the Legal Services Board¹. The Board is to consist of a chairman², the Chief Executive of the Board³ and at least seven, but not more than ten⁴, other persons appointed by the Lord Chancellor⁵. However the validity of any act of the Board is not affected by a vacancy in the office of chairman or amongst the other members or by a defect in the appointment or any disqualification of a person as chairman or another member of the Board⁶.

The Board is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown⁷ and members of the Board are disqualified from membership of the House of Commons⁸. The Board is a public authority for the purposes of the Freedom of Information Act 2000⁹ and its records are public records¹⁰. The Board must keep proper accounts and proper records in relation to the accounts¹¹ and is not to borrow money except with the consent of the Lord Chancellor or in accordance with a general authorisation given by the Lord Chancellor¹².

The Board may regulate its own procedure¹³.

1 Legal Services Act 2007 s 2(1). As to the functions of the Board see PARA 311 et seq. The Lord Chancellor may pay to the Board such sums as the Lord Chancellor may determine as appropriate for the purpose of meeting the expenditure of the Board incurred under or for the purposes of the Legal Services Act 2007 or any other enactment (including any expenditure incurred by it in its capacity as an approved regulator or its capacity as a licensing authority) and the Lord Chancellor may determine the manner in which and times at which those sums are to be paid and impose conditions on the payment of those sums: s 172(1)(a), (2). As to the Lord Chancellor see PARA 301 note 1. As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478; and as to licensing authorities generally see PARA 1478 et seq.

2 Legal Services Act 2007 Sch 1 para 1(1)(a).

3 Legal Services Act 2007 Sch 1 para 1(1)(b). As to the Chief Executive see PARA 307.

4 The Lord Chancellor may by order substitute for the limit on the maximum number of persons a different limit: see the Legal Services Act 2007 Sch 1 para 1(4). At the date at which this volume states the law no such order had been made.

5 Legal Services Act 2007 Sch 1 para 1(1). Until such time as the Board is first constituted under Sch 1 para 1 the Lord Chancellor has the power to modify the functions of a designated regulator or any other body: see Sch 22 paras 1-5. Such modifications have been made: see the Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, arts 4-8.

6 Legal Services Act 2007 Sch 1 para 22.

7 Legal Services Act 2007 Sch 1 para 26(1). Accordingly the Board's property is not to be regarded as property of or held on behalf of the Crown and the Board's staff are not to be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown: Sch 1 para 26(2).

8 See the House of Commons Disqualification Act 1975 Sch 1 Pt 2; and **PARLIAMENT** vol 78 (2010) PARA 908.

9 See the Freedom of Information Act 2000 Sch 1 Pt 6: and **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583 et seq.

10 See the Public Records Act 1958 Sch 1 Pt 2; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 835 et seq.

11 Legal Services Act 2007 Sch 1 para 25(1)(a). The Board must also prepare in respect of each financial year a statement of accounts: Sch 1 para 25(1)(b). Each statement of accounts must comply with any directions given by the Lord Chancellor, with the approval of the Treasury, as to:

- 15 (1) the information to be contained in it and the manner in which it is to be presented (Sch 1 para 25(2)(a));
- 16 (2) the methods and principles according to which the statement is to be prepared (Sch 1 para 25(2)(b));
- 17 (3) the additional information (if any) which is to be provided for the information of Parliament (Sch 1 para 25(2)(c)).

The Board must give a copy of each statement of accounts to the Lord Chancellor and to the Comptroller and Auditor General before the end of the month of August next following the financial year to which the statement relates: Sch 1 para 25(3). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726. 'Financial year' means the period beginning with the day on which the Board is established and ending with the next following 31 March and each successive period of 12 months: Sch 1 para 25(6). The Comptroller and Auditor General must examine, certify and report on each statement of accounts which is so received and give a copy of the Comptroller and Auditor General's report to the Lord Chancellor: Sch 1 para 25(4). In respect of each financial year, the Lord Chancellor must lay before Parliament a document consisting of a copy of the statement of accounts for that year and a copy of the Comptroller and Auditor General's report on that statement: Sch 1 para 25(5). A requirement or power under the Legal Services Act 2007 to give a direction (or to direct) is a requirement or power to give a direction in writing: s 200(2). Likewise a requirement or power under the Legal Services Act 2007 to give a notice (or to notify) is a requirement or power to give notice in writing: s 200(1). Any power conferred by the Legal Services Act 2007 to give a direction includes power to revoke the direction: s 200(3). However this does not apply to the power conferred on an Ombudsman to give a direction under s 137 (directions on a determination of a complaint) (see PARA 475): s 200(4). 'Document' includes anything in which information is recorded in any form: s 201(1). In relation to a document in which information is recorded otherwise than in a legible form, any reference to the production of the document is a reference to the production of the information in a legible form or in a form from which it can readily be produced in a legible form: s 201(2). Where provision made (in whatever terms) by or under the Legal Services Act 2007 authorises or requires a notice, direction or any other document (including a copy of a document) to be given to a person the following provisions apply: s 202(1). The notice, direction or document may be given to:

- 18 (a) the person by delivering it to the person, by leaving it at the person's proper address or by sending it by post to the person at that address (s 202(2));
- 19 (b) a body corporate by being given to the secretary or clerk of that body (s 202(3));
- 20 (c) a partnership by being given to a partner in the partnership or a person having the control or management of the partnership business (s 202(4));
- 21 (d) any other unincorporated body by being given to a member of the governing body of the unincorporated body (s 202(5)).

For the purposes of s 202, and the Interpretation Act 1978 s 7 (service of documents by post) in its application to the Legal Services Act 2007 s 202, the proper address of a person is:

- 22 (i) in the case of a body corporate, the address of the registered or principal office of the body (s 202(6)(a));
- 23 (ii) in the case of a partnership, or any other unincorporated body, the address of the principal office of the partnership or body (s 202(6)(b));
- 24 (iii) in the case of a person to whom the notice or other document is given in reliance on any of heads (b)-(d) above, the proper address of the body corporate, partnership or other unincorporated body in question (s 202(6)(c));
- 25 (iv) in any other case, the last known address of the person in question (s 202(6)(d)).

In the case of a company registered outside the United Kingdom, a partnership carrying on business outside the United Kingdom or any other unincorporated body with offices outside the United Kingdom, the references in heads (i)-(iv) above to its principal office include references to its principal office within the United Kingdom (if any): s 202(7).

The above provisions have effect subject to s 203: s 202(8). The following apply where s 202 authorises the giving of a notice, direction or other document by its delivery to a particular person (the 'recipient'), and the notice, direction or other document is transmitted to the recipient by means of an electronic communications network or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible: s 203(1). The transmission has effect for the purposes of the Legal Services Act 2007 as a delivery of the notice, direction or other document to the recipient, but only if the requirements imposed by or under s 203 are complied with: s 203(2).

Where the recipient is the Board, the Office for Legal Complaints or an Ombudsman the recipient must have indicated its willingness to receive the notice, direction or other document by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible, the transmission must be made in such manner, and satisfy such other conditions as the recipient may require and the notice, direction or other document must take such form as the recipient may require: s 203(3). As to the Office for Legal Complaints see s 114; and PARA 442 et seq.

Where the person making the transmission is the Board, the Office for Legal Complaints or an Ombudsman, that person may determine the manner in which the transmission is made and the form in which the notice, direction or other document is transmitted: s 203(4).

However, where the recipient is a person other than the Board, the Office for Legal Complaints or an Ombudsman the recipient or the person on whose behalf the recipient receives the notice, direction or other document, must have indicated to the person making the transmission the recipient's willingness to receive notices, directions or other documents transmitted in the form and manner used: s 203(5).

An indication to any person for the purposes of s 203(5):

- 26 (A) must be given to that person in such manner as that person may require (s 203(6)(a));
- 27 (B) may be a general indication or one that is limited to notices or documents of particular descriptions (s 203(6)(b));
- 28 (C) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission (s 203(6)(c));
- 29 (D) may be modified or withdrawn at any time by a notice given to that person in such manner as that person may require (s 203(6)(d)).

An indication, requirement or determination given, imposed or made by the Board, the Office for Legal Complaints or an Ombudsman for the purposes of s 203 is to be given, imposed or made by being published by that person: s 203(7).

As to the meaning of 'electronic communications network' see the Communications Act 2003 s 32; and **TELECOMMUNICATIONS** vol 97 (2010) PARA 60 (definition applied by virtue of the Legal Services Act 2007 s 203(8)).

12 Legal Services Act 2007 Sch 1 para 24.

13 Legal Services Act 2007 Sch 1 para 21(1).

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304. The chairman.

The chairman must be a lay person¹ appointed by the Lord Chancellor². It is a condition of the appointment of the chairman that the person appointed must not during the appointment:

- 9 (1) carry on any activity which is a reserved legal activity³;
- 10 (2) provide regulated claims management services⁴; or
- 11 (3) provide immigration advice or immigration services⁵,

for or in expectation of any fee, gain or reward⁶.

The chairman ceases to be chairman upon ceasing to be a member of the Legal Services Board⁷.

The chairman is to be paid by the Board in accordance with provision made by or under his terms of appointment⁸. The terms of appointment may provide for the Board to pay or make payments towards the provision of a pension, allowance or gratuity to or in respect of that person⁹. If the Lord Chancellor thinks there are circumstances that make it right for a person ceasing to hold office as chairman to receive compensation, the Board may pay that person such compensation as the Lord Chancellor may determine¹⁰.

1 As to the meaning of 'lay person' see PARA 305.

2 Legal Services Act 2007 Sch 1 paras 1(1)(a), 2(2). As to the Lord Chancellor see PARA 301 note 1.

3 Legal Services Act 2007 Sch 1 para 2(3)(a). As to the meaning of 'reserved legal activity' see PARA 512.

4 Legal Services Act 2007 Sch 1 para 2(3)(b). As to the meaning of 'regulated claims management services' see the Compensation Act 2007 s 4(2)(e); and **DAMAGES**.

5 Legal Services Act 2007 Sch 1 para 2(3)(c).

6 Legal Services Act 2007 Sch 1 para 2(3).

7 Legal Services Act 2007 Sch 1 para 8. As to the Legal Services Board see s 2; and PARA 303.

8 Legal Services Act 2007 Sch 1 para 10.

9 Legal Services Act 2007 Sch 1 para 11.

10 Legal Services Act 2007 Sch 1 para 12.

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Appointment of ordinary members.

305. Appointment of ordinary members.

Before appointing a member of the Legal Services Board¹ other than the Chief Executive² (an 'ordinary member'), the Lord Chancellor³ must consult the Lord Chief Justice about the process for appointment of the member and about the person selected for appointment⁴. In appointing persons as ordinary members the Lord Chancellor must ensure that a majority of the members of the board are lay persons⁵. 'Lay person' is a reference to a person who has never been:

- 12 (1) an authorised person in relation to an activity which is a reserved legal activity⁶;
- 13 (2) a person authorised, by a person designated⁷ to provide services which are regulated claims management services⁸;
- 14 (3) an advocate in Scotland⁹;
- 15 (4) a solicitor in Scotland¹⁰;
- 16 (5) a member of the Bar of Northern Ireland¹¹;
- 17 (6) a solicitor of the Court of Judicature of Northern Ireland¹².

If an ordinary member who is a lay person becomes a person within heads (1) to (6) above that person ceases to be a member of the board¹³.

In appointing persons to be ordinary members, the Lord Chancellor must have regard to the desirability of securing that the board includes members who (between them) have experience in or knowledge of:

- 18 (a) the provision of legal services¹⁴;
- 19 (b) legal education and legal training¹⁵;
- 20 (c) consumer affairs¹⁶;
- 21 (d) civil or criminal proceedings and the working of the courts¹⁷;
- 22 (e) competition matters¹⁸;
- 23 (f) the maintenance of the professional standards of persons who provide legal services¹⁹;
- 24 (g) the maintenance of standards in professions other than the legal profession²⁰;
- 25 (h) the handling of complaints²¹;
- 26 (i) commercial affairs²²;
- 27 (j) non-commercial legal services²³;
- 28 (k) the differing needs of consumers²⁴;
- 29 (l) the provision of claims management services²⁵.

The ordinary members are to be paid by the board in accordance with provisions made by or under their terms of appointment²⁶. The terms of appointment may also provide for the Board to pay or make payments towards the provision of a pension, allowance or gratuity to or in respect of that person²⁷.

1 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

2 As to the appointment of the Chief Executive see PARA 307.

3 As to the Lord Chancellor see PARA 301 note 1.

4 Legal Services Act 2007 Sch 1 para 1(2), (3).

5 Legal Services Act 2007 Sch 1 para 2(1).

6 Legal Services Act 2007 Sch 1 para 2(4)(a). As to the meaning of 'reserved legal activity' see PARA 512. For these purposes, a person is deemed to have been an authorised person in relation to an activity which is a reserved legal activity if that person has before the appointed day been:

- 30 (1) a barrister (Sch 1 para 2(5)(a));
- 31 (2) a solicitor (Sch 1 para 2(5)(b));
- 32 (3) a public notary (Sch 1 para 2(5)(c));
- 33 (4) a licensed conveyancer (Sch 1 para 2(5)(d));
- 34 (5) granted a certificate issued by the Institute of Legal Executives authorising the person to practise as a legal executive (Sch 1 para 2(5)(e));
- 35 (6) a registered patent attorney within the meaning of the Copyright, Designs and Patents Act 1988 s 275(1) (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 615) (Legal Services Act 2007 Sch 1 para 2(5)(f));
- 36 (7) a registered trade mark attorney, within the meaning of the Trade Marks Act 1994 (see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 34) (Legal Services Act 2007 Sch 1 para 2(5)(g)); or
- 37 (8) granted a right of audience or a right to conduct litigation in relation to any proceedings by virtue of the Courts and Legal Services Act 1990 ss 27(2)(a), 28(2)(a) (see PARAS 497-498) (Legal Services Act 2007 Sch 1 para 2(5)(h)).

As to the meaning of 'barrister' see PARA 1033 and as to barristers generally see PARA 1033 et seq. As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq. As to the meaning of 'regulated claims management services' see the Compensation Act 2006 s 4(2)(e); and **DAMAGES** (definition applied by the Legal Services Act 2007 Sch 1 para 2(3)(b)). As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11(2); and PARA 1319 note 3 (definition applied by the Legal Services Act 2007 Sch 1 para 2(6)). For these purposes 'appointed day' means the day appointed for the coming into force of s 13 (see PARA 509); Sch 1 para 2(6). At the date at which this volume states the law no such day had been appointed.

7 ie a person designated under the Compensation Act 2006 s 5(1) (see **DAMAGES**).

8 Legal Services Act 2007 Sch 1 para 2(4)(b).

9 Legal Services Act 2007 Sch 1 para 2(4)(c).

10 Legal Services Act 2007 Sch 1 para 2(4)(d).

11 Legal Services Act 2007 Sch 1 para 2(4)(e).

12 Legal Services Act 2007 Sch 1 para 2(4)(f).

13 Legal Services Act 2007 Sch 1 para 6.

14 Legal Services Act 2007 Sch 1 para 3(a).

15 Legal Services Act 2007 Sch 1 para 3(b).

16 Legal Services Act 2007 Sch 1 para 3(c).

17 Legal Services Act 2007 Sch 1 para 3(d). As to the meaning of 'court' see PARA 302 note 13.

18 Legal Services Act 2007 Sch 1 para 3(e).

19 Legal Services Act 2007 Sch 1 para 3(f).

20 Legal Services Act 2007 Sch 1 para 3(g).

21 Legal Services Act 2007 Sch 1 para 3(h).

22 Legal Services Act 2007 Sch 1 para 3(i).

23 Legal Services Act 2007 Sch 1 para 3(j). 'Non-commercial legal services' means: (1) legal services carried on otherwise than with a view to profit; (2) legal services carried on by a not for profit body, a community interest company or an independent trade union: s 207(1). On the date at which this volume states the law this definition is in force for the purposes of Sch 1 (see PARA 303 et seq), and Sch 15 para 4(g) (see PARA 443): see the Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, art 3.

24 Legal Services Act 2007 Sch 1 para 3(k). As to the meaning of 'consumers' see PARA 302 note 8.

25 Legal Services Act 2007 Sch 1 para 3(l). As to the meaning of 'claims management services' see the Compensation Act 2006 s 4; and **DAMAGES**.

26 Legal Services Act 2007 Sch 1 para 10.

27 Legal Services Act 2007 Sch 1 para 11.

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306. Appointment terms and tenure of ordinary members.

An ordinary member¹ is to hold and vacate office in accordance with the terms and conditions of that member's appointment² which must be for a fixed period not exceeding five years³. He may at any time resign from office⁴ and may be removed from office by the Lord Chancellor⁵ if the Lord Chancellor is satisfied that the member:

- 30 (1) has failed without reasonable excuse to discharge the functions of the office for a continuous period of at least six months⁶;
- 31 (2) has been convicted of an offence⁷;
- 32 (3) is an undischarged bankrupt⁸; or
- 33 (4) is otherwise unfit to hold the office or unable to discharge its functions⁹.

He may also be removed from office by the Lord Chancellor if the member is the chairman and has breached certain conditions¹⁰ imposed on his appointment¹¹.

If the Lord Chancellor thinks there are circumstances that make it right for a person ceasing to hold office as an ordinary member to receive compensation, the Legal Services Board¹² may pay that person such compensation as the Lord Chancellor may determine¹³.

1 As to the appointment of ordinary members see PARA 305.

2 Legal Services Act 2007 Sch 1 para 4. This is subject to Sch 1.

3 Legal Services Act 2007 Sch 1 para 5(1), (2). A person who has held office as an ordinary member may be re-appointed, once only, for a further period (whether consecutive or not) not exceeding five years: Sch 1 para 5(3).

4 Legal Services Act 2007 Sch 1 para 7(1)(a).

5 Legal Services Act 2007 Sch 1 para 7(1)(b). Before removing any ordinary member under Sch 1 para 7(1)(b), the Lord Chancellor must consult the Lord Chief Justice and, if the ordinary member is not the chairman, the chairman: Sch 1 para 7(5). As to the Lord Chancellor see PARA 301 note 1.

6 See the Legal Services Act 2007 Sch 1 para 7(3)(a). The Lord Chancellor may not remove an ordinary member on the ground mentioned in Sch 1 para 7(3)(a) more than three months after the end of the period mentioned: Sch 1 para 7(6).

7 See the Legal Services Act 2007 Sch 1 para 7(3)(b).

8 See the Legal Services Act 2007 Sch 1 para 7(3)(c).

9 See the Legal Services Act 2007 Sch 1 para 7(3)(d).

10 Ie the conditions imposed by the Legal Services Act 2007 Sch 1 para 2(3) (see PARA 304).

11 Legal Services Act 2007 Sch 1 para 7(4).

12 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

13 Legal Services Act 2007 Sch 1 para 12.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(i) Establishment and Constitution/307. The Chief Executive and staff.

307. The Chief Executive and staff.

The Chief Executive is a member of the Legal Services Board¹ appointed by the Board². Where a person ceases to be employed as Chief Executive, that person ceases to be a member of the Board³. The Board may appoint such other staff as it considers appropriate to assist in the performance of its functions⁴. The Chief Executive and other staff are to be appointed on terms and conditions determined by the Board and paid by the Board in accordance with provision made by or under the terms of appointment⁵.

The terms and conditions on which the Chief Executive or any other member of staff is appointed may provide for the Board to pay or make payments towards the provision of a pension, allowance or gratuity to or in respect of that person⁶. The Board may pay compensation for loss of employment to or in respect of a member (or former member) of staff⁷.

The board may also make arrangements with such persons as it considers appropriate for assistance to be provided to it⁸.

1 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

2 See the Legal Services Act 2007 Sch 1 para 13. Until the first Chief Executive of the Board is appointed under Sch 1 para 13 the Board's functions under Sch 1, Sch 15 (see PARA 442 et seq) and Sch 22 para 10(8) (see PARA 444) may be exercised by the ordinary members of the Board: Sch 22 para 9(1). As to the meaning of 'ordinary member' see Sch 1; and PARA 305 (definition applied by Sch 22 para 9(2)).

3 Legal Services Act 2007 Sch 1 para 9.

4 Legal Services Act 2007 Sch 1 para 14. A member of staff so appointed may be a member (but not chairman) of the Board: Sch 1 para 18.

5 Legal Services Act 2007 Sch 1 para 15.

6 Legal Services Act 2007 Sch 1 para 16.

7 Legal Services Act 2007 Sch 1 para 17.

8 Legal Services Act 2007 Sch 1 para 19(1). Arrangements may include the paying of fees to such persons: Sch 1 para 19(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(i) Establishment and Constitution/308. Committees.

308. Committees.

The Legal Services Board¹ may establish committees² and any committee so established may establish sub-committees³. Only members of the Board may be members of a committee or sub-committee⁴ but a majority of the members of a committee or a sub-committee must be lay persons⁵. The Board may regulate the procedure of its committees and sub-committees, including quorum⁶.

1 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

2 Legal Services Act 2007 Sch 1 para 20(1).

3 Legal Services Act 2007 Sch 1 para 20(2).

4 Legal Services Act 2007 Sch 1 para 20(3).

5 Legal Services Act 2007 Sch 1 para 20(4). As to the meaning of 'lay person' see PARA 305.

6 Legal Services Act 2007 Sch 1 para 21(1). The quorum of a committee or sub-committee must not be less than three: Sch 1 para 21(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(i) Establishment and Constitution/309. Application of seal and proof of instruments.

309. Application of seal and proof of instruments.

The application of the seal of the Legal Services Board¹ is to be authenticated by the signature of any member of the Board, or of its staff, who has been authorised (whether generally or specifically) by the Board for the purpose². Any contract or instrument which, if entered into or executed by an individual, would not need to be under seal may be entered into or executed on behalf of the Board by any person who has been authorised (whether generally or specifically) by the Board for the purpose³. A document purporting to be duly executed under the seal of the Board or signed on its behalf is to be received in evidence and is to be taken to be executed or signed in that way, unless the contrary is proved⁴.

1 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

2 Legal Services Act 2007 Sch 1 para 27.

3 Legal Services Act 2007 Sch 1 para 28.

4 Legal Services Act 2007 Sch 1 para 29.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(i) Establishment and Constitution/310. Exemption from liability in damages.

310. Exemption from liability in damages.

The following are not liable in damages for anything done or omitted in the exercise or purported exercise of the functions of the Legal Services Board¹:

- 34 (1) the Board²;
- 35 (2) a member of the Board³;
- 36 (3) a member of the Board's staff⁴;
- 37 (4) a person to whom the Board in its capacity as an approved regulator delegates⁵ any of its functions⁶;
- 38 (5) a person to whom the Board in its capacity as a licensing authority delegates⁷ any of its functions⁸.

1 The functions of the Legal Services Board conferred by or by virtue of the Legal Services Act 2007 or any other enactment: Sch 1 para 33(2). As to the Legal Services Board see s 2; and PARA 303.

2 See the Legal Services Act 2007 Sch 1 para 33(1)(a), (2). However Sch 1 para 33(1) does not apply where it is showed that the act or omission was in bad faith or so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of the Human Rights Act 1998 s 6(1) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): Legal Services Act 2007 Sch 1 para 33(3).

3 See the Legal Services Act 2007 Sch 1 para 33(1)(b), (2).

4 See the Legal Services Act 2007 Sch 1 para 33(1)(c), (2). The member of the Board's staff mentioned in the text refers to a member of the Board's staff appointed under Sch 1 para 14 (see PARA 307).

5 The functions delegated by virtue of the Legal Services Act 2007 s 64(2)(k) (see PARA 369). As to the meaning of 'approved regulator' see PARA 358.

6 See the Legal Services Act 2007 Sch 1 para 33(1)(d), (2).

7 The functions delegated by virtue of the Legal Services Act 2007 s 73(3)(a) (see PARA 1478).

8 See the Legal Services Act 2007 Sch 1 para 33(1)(e), (2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/311. General functions.

(ii) Functions of the Board

311. General functions.

In discharging its functions the Legal Services Board¹ must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives² and which the Board considers most appropriate for the purpose of meeting those objectives³. It must also have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, and consistent and targeted only at cases in which action is needed and any other principle appearing to it to represent the best regulatory practice⁴.

In managing its affairs, the Board must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it⁵.

The Board may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions⁶.

As from a day to be appointed the following provisions have effect⁷. The Board must assist in the maintenance and development of standards in relation to the regulation by approved regulators⁸ of persons authorised by them to carry on activities which are reserved legal activities⁹ and the education and training of persons so authorised¹⁰.

The Board must establish and maintain a panel of persons (to be known as the 'Consumer Panel') to represent the interests of consumers and must consider any representations made to it by the Consumer Panel¹¹.

1 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

2 As to the 'regulatory objectives' see PARA 302.

3 Legal Services Act 2007 s 3(1), (2).

4 Legal Services Act 2007 s 3(3). The Board must specify in its statement of policy how it will comply with this requirement: see s 49(4); and PARA 412.

5 Legal Services Act 2007 s 5.

6 Legal Services Act 2007 s 7.

7 The Legal Services Act 2007 ss 4, 8(1), 10(1) are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

8 As to the meaning of 'approved regulator' see PARA 358.

9 As to the meaning of 'reserved legal activities' see PARA 512.

10 Legal Services Act 2007 s 4.

11 Legal Services Act 2007 ss 8(1), 10(1). As to the Consumer Panel see PARAS 323-326. As to the meaning of 'consumers' see PARA 302 note 8.

UPDATE

311 General functions

TEXT AND NOTE 7--Day appointed in relation to Legal Services Act 2007 s 4 is 1 January 2010 (SI 2009/3250); day appointed in relation to Legal Services Act 2007 ss 8(1), 10(1) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/312. Delegation of functions.

312. Delegation of functions.

The Legal Services Board¹ may authorise the chairman, the Chief Executive or any other member of the Board, a committee or sub-committee of the Board, or a member of staff², to exercise, on behalf of the Board, such of its functions, in such circumstances, as it may determine³.

A committee may delegate functions (including functions delegated to the committee) to a sub-committee, the chairman, the Chief Executive or any other member of the Board, or a member of staff⁴.

1 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

2 ie a member of staff appointed under the Legal Services Act 2007 Sch 1 para 14 (see PARA 307).

3 Legal Services Act 2007 Sch 1 para 23(1). This does not apply to any power or duty the Board has to make rules (other than excluded rules) under the Legal Services Act 2007: Sch 1 para 23(4). For these purposes 'excluded rules' means rules of procedure made under Sch 1 para 21 (see PARA 308) in relation to any committee or sub-committee of the Board and rules made by the Board in its capacity as an approved regulator or a licensing authority: Sch 1 para 23(5). As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

Schedule 1 para 23(1), (2) is subject to:

38 (1) any provision made by an order under s 62 by virtue of s 64(2)(k) (powers to authorise the Board to delegate to any person functions conferred on it in its capacity as an approved regulator) (see PARA 369) (Sch 1 para 23(3)(a)); and

39 (2) s 73(3)(a) (power to delegate to any person functions conferred on the Board in its capacity as a licensing authority) (see PARA 1478) (Sch 1 para 23(3)(b)).

4 Legal Services Act 2007 Sch 1 para 23(2). See note 3. As to the member of staff see note 2.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/313. Annual report.

313. Annual report.

The Legal Services Board¹ must prepare a report (the 'annual report') for each financial year² dealing with the discharge of the Board's functions³, the extent to which, in the Board's opinion, the Board has met the regulatory objectives and such other matters as the Lord Chancellor may from time to time direct⁴. As from a day to be appointed⁵ the report must also deal with how, in the Board's opinion, the activities of licensing authorities and licensed bodies⁶ have affected the regulatory objectives⁷.

1 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

2 For these purposes 'financial year' means the period beginning with the day on which the Board is established and ending with the next following 31 March and each successive period of 12 months: s 6(4).

3 As to the Board's functions see PARA 311.

4 Legal Services Act 2007 s 6(1), (2). As soon as reasonably practicable after the end of each financial year, the Board must give the Lord Chancellor a copy of the annual report prepared for that year and the Lord Chancellor must lay a copy of the report before Parliament: s 6(3), (4). As to the Lord Chancellor see PARA 301 note 1. As to the meaning of 'regulatory objectives' see PARA 302.

5 The Legal Services Act 2007 s 110(1) is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

6 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the meaning of 'licensed bodies' see PARA 1476 note 7.

7 Legal Services Act 2007 s 110(1). However s 110 does not apply to an annual report for a financial year before the first financial year in which a licence is issued under Pt 5 (ss 71-111): Legal Services Act 2007 s 110(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/314. Guidance.

314. Guidance.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may give guidance:

- 39 (1) about the operation of the Legal Services Act 2007 and of any order made under it³;
- 40 (2) about the operation of any rules made by the Board under the Legal Services Act 2007⁴;
- 41 (3) about any matter relating to the Board's functions⁵;
- 42 (4) for the purpose of meeting the regulatory objectives⁶;
- 43 (5) about the content of licensing rules⁷;
- 44 (6) about any other matters about which it appears to the Board to be desirable to give guidance⁸.

The Board may publish its guidance, offer copies of its published guidance for sale at a reasonable price and, if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance⁹.

When exercising its functions, the Board may have regard to the extent to which an approved regulator¹⁰ has complied with any guidance issued under the above provisions which is applicable to the approved regulator¹¹.

1 The Legal Services Act 2007 s 162 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303. When exercising its functions in its capacity as an approved regulator by virtue of an order under s 162(1)(a) (see PARA 358) or in its capacity as a licensing authority under Part 5 (ss 71-111) (see PARA 1478 et seq), the Board must have regard to any guidance it has issued under s 162: s 162(6). The Board may give financial or other assistance to persons giving information or advice of a kind which the Board could give under s 162: s 162(3).

3 Legal Services Act 2007 s 162(1)(a).

4 Legal Services Act 2007 s 162(1)(b). Such rules are non-statutory and are not set out in this work.

5 Legal Services Act 2007 s 162(1)(c). As to the functions of the Board generally see PARA 311.

6 Legal Services Act 2007 s 162(1)(d). As to the meaning of 'regulatory objectives' see PARA 302.

7 Legal Services Act 2007 s 162(1)(e). As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

8 Legal Services Act 2007 s 162(1)(f). Guidance under s 162 may consist of such information and advice as the Board considers appropriate: s 162(2).

9 Legal Services Act 2007 s 162(4). Any amounts paid to the Board under s 162 is payable into the Consolidated Fund: see s 175(1)(k). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

10 As to the meaning of 'approved regulator' see PARA 358.

11 Legal Services Act 2007 s 162(5).

UPDATE

314 Guidance

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 ss 162, 175(1)(k) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/315. Voluntary arrangements.

315. Voluntary arrangements.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may enter into arrangements with any person under which the Board is to provide assistance for the purpose of improving standards of service and promoting best practice in connection with the carrying on of any legal activity³. These arrangements may (among other things) provide for the Board to give advice on the best regulatory practice or the contents of codes of practice or other voluntary arrangements⁴. The arrangements may include provision as to the terms on which assistance is to be provided by the Board (including provision as to payment)⁵.

Where the Board enters into arrangements under the above provisions, it must publish a statement giving details of the arrangements and explaining what they are intended to achieve⁶.

1 The Legal Services Act 2007 s 163 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

3 Legal Services Act 2007 s 163(1). As to the meaning of 'legal activity' see PARA 512.

4 Legal Services Act 2007 s 163(2).

5 Legal Services Act 2007 s 163(3). Any amount payable to the Board under arrangements entered into under s 163 is payable into the Consolidated Fund: see s 175(1)(l). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

6 Legal Services Act 2007 s 163(4).

UPDATE

315 Voluntary arrangements

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/316. Levy rules.

316. Levy rules.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must make rules³ providing for the imposition of a levy on leviable bodies⁴ for the purpose of raising an amount corresponding to the aggregate of:

- 45 (1) the leviable Board expenditure⁵;
- 46 (2) the leviable Office for Legal Complaints expenditure⁶; and
- 47 (3) the leviable Lord Chancellor expenditure⁷.

1 The Legal Services Act 2007 ss 173, 204(2) are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

3 Before making rules under the Legal Services Act 2007 s 173, the Board must satisfy itself that the apportionment of the levy as between different leviable bodies will be in accordance with fair principles: s 173(3). The Board may not make rules under s 173 except with the consent of the Lord Chancellor: s 173(4). Any rules made by the Board under s 173 must be made by statutory instrument and the Statutory Instruments Act 1946 applies to the Board's powers to make such rules as if the Board were a Minister of the Crown: s 204(2). At the date at which this volume states the law no such rules had been made.

4 A levy imposed under the Legal Services Act 2007 s 173 is payable to the Board: s 173(2). Any sum so received is payable into the Consolidated Fund: see s 175(1)(j). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031. 'Leviable body' means an approved regulator, the person designated under the Compensation Act 2006 s 5(1) (the Regulator in relation to claims management services) (see **DAMAGES**) or any other person prescribed by the Lord Chancellor by order: Legal Services Act 2007 s 173(5). In s 173(5) the reference to 'an approved regulator' does not include the Board where it is designated as an approved regulator under s 62 (see PARA 367): s 173(11). As to the meaning of 'approved regulator' see PARA 358.

5 Legal Services Act 2007 s 173(1)(a). 'Leviable Board expenditure' means the difference between:

- 40 (1) the expenditure of the Board incurred under or for the purposes of the Legal Services Act 2007 or any other enactment (including any expenditure incurred in connection with its establishment and any expenditure incurred by it in its capacity as an approved regulator or its capacity as a licensing authority) (s 173(6)(a)); and
- 41 (2) the aggregate of the amounts which the Board pays into the consolidated fund under s 175(1)(a), (c)-(e), (k)-(m) or by virtue of regulations under the Compensation Act 2006 Schedule para 7(g) (see **DAMAGES**) (Legal Services Act 2007 s 173(6)(b)).

6 Legal Services Act 2007 s 173(1)(b). 'Leviable Office for Legal Complaints expenditure' means the difference between:

- 42 (1) the expenditure of the Office for Legal Complaints incurred under or for the purposes of the Legal Services Act 2007 (including any expenditure incurred in connection with its establishment) (s 173(7)(a)); and
- 43 (2) the aggregate of the amounts which the Office for Legal Complaints pays into the consolidated fund under s 175(1)(g), (h), (n) (see PARAS 461, 471, 474) (s 173(7)(b)).

However s 173(7)(a) does not include such proportion of the expenditure of the Office for Legal Complaints incurred under or for the purposes of the Legal Services Act 2007 as may reasonably be attributed to the exercise of its functions under ss 164-166 (see PARAS 463-464): s 173(8). As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442 et seq.

7 Legal Services Act 2007 s 173(1)(c). 'Leviable Lord Chancellor expenditure' means any expenditure incurred by the Lord Chancellor in connection with the establishment of the Board or the Office for Legal Complaints (including expenditure incurred under or for the purposes of Sch 22 para 10 (Interim Chief Executive of the Office for Legal Complaints) (see PARA 444)); s 173(9). The leviable Lord Chancellor expenditure does not include any expenditure under s 172 (funding of Board and Office for Legal Complaints) (see PARA 303); s 173(10).

UPDATE

316 Levy rules

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 ss 173(1), (3)-(11), 204 is 1 January 2009: SI 2008/3149. Day appointed in relation to Legal Services Act 2007 s 173(2) is 1 January 2010: SI 2009/3250. See the Legal Services Act 2007 (Levy) Rules 2010, SI 2010/213.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/317. Payment of the levy.

317. Payment of the levy.

As from a day to be appointed the following provisions have effect¹. The levy² is to be payable at such rate and at such times as may be specified in the levy rules³. The provision made in the levy rules for determining the amount of the levy payable in respect of a particular period may require account to be taken of estimated as well as actual expenditure and receipts and must require the Legal Services Board⁴ to obtain the Lord Chancellor's agreement to the amount payable in respect of a particular period⁵. The levy rules may provide for different parts of the levy to be payable at different rates⁶.

Any amount which is owed to the Board in accordance with the levy rules may be recovered as a debt due to the Board⁷.

The levy rules must require the Board to calculate the amount of the levy payable by each leviable body and to notify each leviable body⁸ of its liability to pay an amount of levy and the time or times at which it becomes payable⁹.

1 The Legal Services Act 2007 s 174 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 'Levy' means the levy payable by virtue of the Legal Services Act 2007 s 173 (see PARA 316): s 174(1).

3 Legal Services Act 2007 s 174(2). 'Levy rules' means the rules made in accordance with s 173 (see PARA 316): s 174(1).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

5 Legal Services Act 2007 s 174(3).

6 Legal Services Act 2007 s 174(4).

7 Legal Services Act 2007 s 174(5). Without prejudice to s 174(2)-(6), the levy rules may:

44 (1) make provision about the collection and recovery of the levy (s 174(7)(a));

45 (2) make provision about the circumstances in which any amount of the levy payable may be waived (s 174(7)(b));

46 (3) provide that if the whole or any part of an amount of the levy payable under the levy rules is not paid by the time when it is required to be paid under the rules, the unpaid balance from time to time carries interest at the rate determined by or in accordance with the levy rules (s 174(7)(c)).

8 As to the meaning of 'leviable body' see PARA 316 note 4 (definition applied by the Legal Services Act 2007 s 174(1)).

9 Legal Services Act 2007 s 174(6).

UPDATE

317 Payment of the levy

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 174(1), (3), (4), (6), (7) is 1 January 2009: SI 2008/3149. Day appointed in relation to Legal Services Act 2007 s 174(2), (5) is 1 January 2010: SI 2009/3250. See the Legal Services Act 2007 (Levy) Rules 2010, SI 2010/213.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(ii) Functions of the Board/318. Consultation requirements for rules.

318. Consultation requirements for rules.

As from a day to be appointed the following provisions have effect¹. If the Legal Services Board² proposes to make any rules³, other than excluded rules⁴, it must publish a draft of the proposed rules accompanied by a notice⁵ which states that representations about the proposals may be made to the Board within the period specified in the notice⁶. Before making the rules, the Board must have regard to any representations duly made⁷.

The Board must publish any rules it makes and rules may not take effect before the time they are published⁸. If the rules differ from the draft rules that were published⁹ in a way which is, in the opinion of the Board, material, it must publish details of the difference¹⁰.

1 The Legal Services Act 2007 s 205 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

3 The Legal Services Act 2007 s 205 applies in relation to rules made by the Legal Services Board under that Act: see s 205(1).

4 For the purposes of the Legal Services Act 2007 s 205 'excluded rules' means:

47 (1) rules of procedure made by the Board for the purposes of Sch 1 para 12 (s 205(9)(a));

48 (2) rules made by the Board in its capacity as an approved regulator or a licensing authority (see 205(9)(b)); and

49 (3) rules of procedure made by the Office for Legal Services for the purposes of Sch 15 para 20 (s 205(9)(c)),

and references to making rules include references to modifying the rules and, in relation to any modifications of rules, references to the proposed rules are to be read as references to the proposed modifications: s 205(9). As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

5 Legal Services Act 2007 s 205(2). The Board may make a reasonable charge for providing a person with a copy of a draft published under s 205(2): s 205(8). Any amounts so paid to the Board are payable into the Consolidated Fund: see s 175(1)(m). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031. As to notices generally see PARA 303 note 11.

6 Legal Services Act 2007 s 205(3).

7 Legal Services Act 2007 s 205(4). Section 205 is subject to s 156(3) (see PARA 473): s 205(10).

8 Legal Services Act 2007 s 205(6). Section 205(6) does not apply to rules made by the Board under s 37(4) (see PARA 394), s 95(3) (see PARA 1547) or s 173 (see PARA 316): s 205(7). The Board may make a reasonable charge for providing a person with a copy of a draft published under s 205(6): s 205(8). Any amounts so paid to the Board are payable into the Consolidated Fund: see s 175(1)(m).

9 It is published under the Legal Services Act 2007 s 205(2).

10 Legal Services Act 2007 s 205(5).

UPDATE

318 Consultation requirements for rules

TEXT AND NOTE 1--Day appointed is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iii) Restricted Information/319. Restricted information.

(iii) Restricted Information

319. Restricted information.

As from a day to be appointed the following provisions have effect¹. Except as provided by certain provisions², information (other than excluded information³) which is obtained by the Legal Services Board in the exercise of its functions⁴ ('restricted information') must not be disclosed by a restricted person⁵ or by any person who receives the information directly or indirectly from a restricted person⁶.

1 The Legal Services Act 2007 s 167 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 le except as provided by the Legal Services Act 2007 s 168 (see PARA 320).

3 For these purposes 'excluded information' means:

50 (1) information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it (Legal Services Act 2007 s 167(3)(a));

51 (2) information which at the time of the disclosure is or has already been made available to the public from other sources (s 167(7)(b));

52 (3) information which was obtained more than 70 years before the date of the disclosure (s 167(7)(c)).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303. As to the functions of the Board see PARAS 311-318.

5 For these purposes 'restricted person' means:

53 (1) the Board (including the Board in its capacity as an approved regulator or a licensing authority) (Legal Services Act 2007 s 167(2)(a));

54 (2) a person who exercises functions delegated under Sch 1 para 23 (see PARA 312) or s 73 (see PARA 1478) or by virtue of s 64(2)(k) (see PARA 369) (s 167(2)(b)).

As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

6 Legal Services Act 2007 s 167(1).

UPDATE

319-322 Restricted Information

These provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iii) Restricted Information/320. Disclosure of restricted information.

320. Disclosure of restricted information.

As from a day to be appointed the following provisions have effect¹. A restricted person² may disclose restricted information³ to another restricted person⁴. Restricted information may also be disclosed for the purposes of enabling or assisting the Legal Services Board to exercise its functions⁵ (whether as an approved regulator, a licensing authority or otherwise)⁶. Furthermore the provisions preventing the disclosure of restricted information⁷ do not preclude the disclosure of restricted information⁸:

- 48 (1) where the disclosure is a result of the Board exercising any power to publish information under the Legal Services Act 2007⁹;
- 49 (2) for the purposes of enabling or assisting the Office for Legal Complaints¹⁰, ombudsmen or persons who exercise functions delegated¹¹, to exercise any of its or their functions¹²;
- 50 (3) to an approved regulator for the purposes of enabling or assisting the approved regulator to exercise any of its functions¹³;
- 51 (4) with the consent of the person to whom it relates and (if different) the person from whom the restricted person obtained it¹⁴;
- 52 (5) for the purposes of an inquiry with a view to the taking of any criminal proceedings or for the purposes of any such proceedings¹⁵;
- 53 (6) where the disclosure is required by or by virtue of any provision made by or under Legal Services Act 2007 or any other enactment or other rule of law¹⁶; or
- 54 (7) to such persons (other than approved regulators) who exercise regulatory functions as may be prescribed by order made by the Lord Chancellor, for such purposes as may be so prescribed¹⁷.

However, the Lord Chancellor may by order prevent the disclosure of restricted information for the purposes of enabling or assisting the Board to exercise its functions or by virtue of heads (1) to (7) above¹⁸ in such circumstances, or for such purposes, as may be prescribed in the order¹⁹.

1 The Legal Services Act 2007 ss 27, 168 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'restricted person' see PARA 319 note 5.

3 As to the meaning of 'restricted information' see PARA 319 note 3.

4 Legal Services Act 2007 s 168(1).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303. As to the functions of the Board see PARAS 311-318.

6 Legal Services Act 2007 s 168(2). The Legal Services Act 2007 s 168(2) is subject to s 168(5) (see text and note 19): s 168(4). As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the Board as an approved regulator see PARA 368.

7 ie the Legal Services Act 2007 s 167 (see PARA 319).

- 8 The Legal Services Act 2007 s 168(3) is subject to s 168(5) (see text and note 19).
- 9 Legal Services Act 2007 s 168(3)(a).
- 10 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442 et seq.
- 11 Is a person who exercises functions delegated under the Legal Services Act 2007 Sch 15 para 22 (see PARA 456).
- 12 Legal Services Act 2007 s 168(3)(b).
- 13 Legal Services Act 2007 s 168(3)(c).
- 14 Legal Services Act 2007 s 168(3)(d).
- 15 Legal Services Act 2007 s 168(3)(e).
- 16 Legal Services Act 2007 s 168(3)(f).
- 17 Legal Services Act 2007 s 168(3)(g). At the date at which this volume states the law no such order had been made. As to the meaning of 'regulatory functions' see PARA 301 note 4.
- 18 Is by virtue of the Legal Services Act 2007 s 168(2), (3).
- 19 Legal Services Act 2007 s 168(5). At the date at which this volume states the law no such orders had been made.

UPDATE

319-322 Restricted Information

These provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iii) Restricted Information/321. Disclosure of information to the Board.

321. Disclosure of information to the Board.

As from a day to be appointed the following provisions have effect¹. Information which is held by or on behalf of a permitted person² may be disclosed to the Legal Services Board³ for the purposes of enabling or assisting the Board to exercise its functions (whether as an approved regulator, a licensing authority or otherwise)⁴. The following are permitted persons:

- 55 (1) a chief officer of police of a police force in England and Wales⁵;
- 56 (2) a chief constable of a police force in Scotland⁶;
- 57 (3) the Chief Constable of the Police Service of Northern Ireland⁷;
- 58 (4) the Director General of the Serious Organised Crime Agency⁸;
- 59 (5) the Commissioners for Her Majesty's Revenue and Customs⁹;
- 60 (6) the Financial Services Authority¹⁰.

The Lord Chancellor may by order designate as permitted persons other persons who exercise functions which the Lord Chancellor considers are of a public nature (including a person discharging regulatory functions in relation to any description of activities)¹¹.

1 The Legal Services Act 2007 s 169 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 This applies whether or not the information was held before or after the Legal Services Act 2007 s 169 comes into force.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303. As to the functions of the Board see PARAS 311-318. A disclosure under s 169 is not to be taken to breach any restriction on the disclosure of information (however imposed): s 169(2). However nothing in s 169 authorises the making of a disclosure which contravenes the Data Protection Act 1998 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 806 et seq) or which is prohibited by the Regulation of Investigatory Powers Act 2000 Pt 1 (ss 1-25) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 506): Legal Services Act 2007 s 169(3). Section 169 does not affect a power to disclose which exists apart from s 169: s 169(4).

4 Legal Services Act 2007 s 169(1). As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the Board as an approved regulator see PARA 368.

5 Legal Services Act 2007 s 169(5)(a). As to chief officers of police see **POLICE** vol 36(1) (2007 Reissue) PARA 178.

6 Legal Services Act 2007 s 169(5)(b).

7 Legal Services Act 2007 s 169(5)(c).

8 Legal Services Act 2007 s 169(5)(d). As to the Director General of the Serious Organised Crime Agency see **POLICE** vol 36(1) (2007 Reissue) PARA 430 et seq.

9 Legal Services Act 2007 s 169(5)(e). As to the Commissioners for Her Majesty's Revenue and Customs see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 900 et seq. Information must not be disclosed under s 169 on behalf of the Commissioners for Her Majesty's Revenue and Customs unless the Commissioners authorise the disclosure and the power to authorise the disclosure may be delegated (either generally or for a specific purpose) to an officer of Revenue and Customs: s 169(7), (8).

10 Legal Services Act 2007 s 169(5)(f). As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 6 et seq.

11 Legal Services Act 2007 s 169(6). At the date at which this volume states the law no such orders had been made. As to the meaning of 'regulatory functions' see PARA 301 note 4.

UPDATE

319-322 Restricted Information

These provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iii) Restricted Information/322. Use of information by the Board.

322. Use of information by the Board.

As from a day to be appointed the following provisions have effect¹. Information obtained by the Legal Services Board² (whether in its capacity as an approved regulator or licensing authority³ or otherwise) may be used by the Board for the purposes of, or for any purpose connected with or incidental to, the exercise of its functions⁴.

1 The Legal Services Act 2007 s 171 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303. As to the functions of the Board see PARAS 311-318.

3 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the Board as an approved regulator see PARA 368.

4 Legal Services Act 2007 s 171.

UPDATE

319-322 Restricted Information

These provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iv) Consumer Panel/323. Establishment of the Consumer Panel.

(iv) Consumer Panel

323. Establishment of the Consumer Panel.

As from a day to be appointed the following provisions have effect¹. The Consumer Panel is a panel of persons established and maintained by the Legal Services Board² to represent the interests of consumers³. It consists of such consumers, or persons representing the interests of consumers, as the Board may appoint with the approval of the Lord Chancellor⁴. The Board must secure that the membership of the Consumer Panel is such as to give a fair degree of representation to both:

- 61 (1) those who are using (or are or may be contemplating using), in connection with businesses carried on by them, services provided by persons who are authorised persons in relation to activities which are reserved legal activities⁵; and
- 62 (2) those who are using (or are or may be contemplating using) such services otherwise than in connection with businesses carried on by them⁶.

However the Consumer Panel must not include any person who is:

- 63 (a) a member of the Board or of its staff⁷;
- 64 (b) a member of the Office for Legal Complaints⁸, an Ombudsman appointed by it or a member of its staff⁹;
- 65 (c) a member of the governing body, or of the staff, of an approved regulator¹⁰;
- 66 (d) an authorised person in relation to an activity which is a reserved legal activity¹¹;
- 67 (e) a person authorised, by a person designated¹² to provide services which are regulated claims management services¹³;
- 68 (f) an advocate in Scotland¹⁴;
- 69 (g) a solicitor in Scotland¹⁵;
- 70 (h) a member of the Bar of Northern Ireland¹⁶; or
- 71 (i) a solicitor of the Court of Judicature of Northern Ireland¹⁷.

The Board must appoint one of the members of the Consumer Panel to be the chairman of the Panel¹⁸. The chairman and other members of the Consumer Panel are to be appointed for a fixed period, and on other terms and conditions, determined by the Board and paid by the Board in accordance with provision made by or under the terms of appointment¹⁹. But a person may be removed from office in accordance with those terms and conditions only with the approval of the Lord Chancellor²⁰. A person who ceases to be chairman or another member of the Consumer Panel may be re-appointed²¹.

1 The Legal Services Act 2007 s 8 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

- 3 See the Legal Services Act 2007 s 8(1); and PARA 311. As to the meaning of 'consumers' see PARA 302 note 8.
- 4 Legal Services Act 2007 s 8(2).
- 5 Legal Services Act 2007 s 8(4)(a). As to the meaning of 'reserved legal activities' see PARA 512. As to the meaning of 'authorised persons' in relation to activities which are reserved legal activities see s 18; and PARA 515.
- 6 Legal Services Act 2007 s 8(4)(b).
- 7 Legal Services Act 2007 s 8(5)(a).
- 8 See the Legal Services Act 2007 Pt 6 (ss 112-161); and PARA 442 et seq. As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442 et seq.
- 9 Legal Services Act 2007 s 8(5)(b). A member of staff mentioned in the text refers to a member of staff appointed under Sch 15 para 13 (see PARA 451).
- 10 Legal Services Act 2007 s 8(5)(c). As to the meaning of 'approved regulator' see PARA 358.
- 11 Legal Services Act 2007 s 8(5)(d).
- 12 le designated by the Compensation Act 2006 s 5(1) (see **DAMAGES**).
- 13 Legal Services Act 2007 s 8(5)(e). As to the meaning of 'regulated claims management services' see the Compensation Act 2006 s 4(2)(e); and **DAMAGES**.
- 14 Legal Services Act 2007 s 8(5)(f).
- 15 Legal Services Act 2007 s 8(5)(g).
- 16 Legal Services Act 2007 s 8(5)(h).
- 17 Legal Services Act 2007 s 8(5)(i).
- 18 Legal Services Act 2007 s 8(3).
- 19 Legal Services Act 2007 s 8(6).
- 20 Legal Services Act 2007 s 8(7).
- 21 Legal Services Act 2007 s 8(8).

UPDATE

323-326 Consumer Panel

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iv) Consumer Panel/324. Committees and procedure of the Consumer Panel.

324. Committees and procedure of the Consumer Panel.

As from a day to be appointed the following provisions have effect¹. The Consumer Panel² may make such arrangements as it thinks fit for committees established by the Panel to give advice to the Panel about matters relating to the carrying out of the Panel's functions³. The Consumer Panel may make such other arrangements for regulating its own procedure, and for regulating the procedure of the committees established by it, as it thinks fit⁴. The committees established by the Consumer Panel may include committees the membership of which includes persons who are not members of the Panel⁵. The membership of every committee established by the Consumer Panel must contain at least one person who is a member of the Panel⁶.

Where a person who is not a member of the Consumer Panel is a member of a committee established by it, the Legal Services Board⁷ may pay to that person such remuneration and expenses as the Board may determine⁸.

1 The Legal Services Act 2007 s 9 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the constitution of the Consumer Panel see PARA 323.

3 Legal Services Act 2007 s 9(1).

4 Legal Services Act 2007 s 9(2). Those arrangements may include arrangements as to quorums and as to the making of decisions by a majority: s 9(3).

5 Legal Services Act 2007 s 9(4).

6 Legal Services Act 2007 s 9(5).

7 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

8 Legal Services Act 2007 s 9(6).

UPDATE

323-326 Consumer Panel

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iv) Consumer Panel/325. Representations by the Consumer Panel.

325. Representations by the Consumer Panel.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must consider any representations made to it by the Consumer Panel³. If the Board disagrees with a view expressed, or proposal made, in the representations, it must give the Consumer Panel a notice to that effect stating its reasons for disagreeing⁴. The Consumer Panel may publish such information as it thinks fit about any representations made by it to the Board⁵.

1 The Legal Services Act 2007 s 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

3 Legal Services Act 2007 s 10(1). As to the Consumer Panel see PARA 324.

4 Legal Services Act 2007 s 10(2). As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 s 10(3). Where the Consumer Panel publishes information about any representations made by it, the Board must publish any notice it gives under s 10(2) in respect of those representations: s 10(4).

UPDATE

323-326 Consumer Panel

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(2) LEGAL SERVICES BOARD/(iv) Consumer Panel/326. Advice and research functions of the Consumer Panel.

326. Advice and research functions of the Consumer Panel.

As from a day to be appointed the following provisions have effect¹. The Consumer Panel may, at the request of the Legal Services Board² carry out research for the Board and give advice to the Board³. The Board must consider any such advice given and the results of any such research carried out⁴. The Consumer Panel may publish such information as it thinks fit about advice it gives and about the results of research carried out by it⁵.

1 The Legal Services Act 2007 s 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARA 303.

3 Legal Services Act 2007 s 11(1).

4 Legal Services Act 2007 s 11(2).

5 Legal Services Act 2007 s 11(3).

UPDATE

323-326 Consumer Panel

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(3) LEGAL SERVICES CONSULTATIVE PANEL/327. Establishment of the Legal Services Consultative Panel.

(3) LEGAL SERVICES CONSULTATIVE PANEL

327. Establishment of the Legal Services Consultative Panel.

Until a day to be appointed the following provisions have effect¹. The Secretary of State must appoint persons to form a panel to be known as the Legal Services Consultative Panel².

In appointing persons to the Consultative Panel the Secretary of State must have regard to the desirability of securing that the Consultative Panel includes persons who (between them) have experience in or knowledge of³:

- 72 (1) the provision of legal services⁴;
- 73 (2) the lay advice sector⁵;
- 74 (3) civil or criminal proceedings and the working of the courts⁶;
- 75 (4) legal education and training⁷;
- 76 (5) the maintenance of the professional standards of persons who provide legal services⁸;
- 77 (6) the maintenance of standards in professions other than the legal profession⁹;
- 78 (7) consumer affairs¹⁰;
- 79 (8) commercial affairs¹¹; and
- 80 (9) social conditions¹².

1 The Courts and Legal Services Act 1990 s 18A (added by the Access to Justice Act 1999 s 35(2)) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(c), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 s 18A(1) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

3 Courts and Legal Services Act 1990 s 18A(2) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

4 Courts and Legal Services Act 1990 s 18A(2)(a) (as added and prospectively repealed: see note 1).

5 Courts and Legal Services Act 1990 s 18A(2)(b) (as added and prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 s 18A(2)(c) (as added and prospectively repealed: see note 1). 'Proceedings' means proceedings in any court: s 119(1).

7 Courts and Legal Services Act 1990 s 18A(2)(d) (as added and prospectively repealed: see note 1).

8 Courts and Legal Services Act 1990 s 18A(2)(e) (as added and prospectively repealed: see note 1).

9 Courts and Legal Services Act 1990 s 18A(2)(f) (as added and prospectively repealed: see note 1).

10 Courts and Legal Services Act 1990 s 18A(2)(g) (as added and prospectively repealed: see note 1).

11 Courts and Legal Services Act 1990 s 18A(2)(h) (as added and prospectively repealed: see note 1).

12 Courts and Legal Services Act 1990 s 18A(2)(i) (as added and prospectively repealed: see note 1).

UPDATE

**327-357 Establishment of the Legal Services Consultative Panel ...
Consideration by Secretary of State**

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(3) LEGAL SERVICES CONSULTATIVE PANEL/328. Duties of the Legal Services Consultative Panel.

328. Duties of the Legal Services Consultative Panel.

Until a day to be appointed the following provisions have effect¹. The Legal Services Consultative Panel² has:

- 81 (1) the duty of assisting in the maintenance and development of standards in the education, training and conduct of persons offering legal services by considering relevant issues in accordance with a programme of work approved by the Secretary of State and, where the Consultative Panel considers it appropriate to do so, making recommendations to him³;
- 82 (2) the duty of providing to the Secretary of State, at his request, advice about particular matters relating to any aspect of the provision of legal services (including the education, training and conduct of persons offering legal services)⁴; and
- 83 (3) the functions conferred or imposed on it by other provisions of the Legal Services Act 2007 or any other enactment⁵.

The Secretary of State must publish any recommendations made to him by the Consultative Panel in performance of the duty in head (1) and any advice provided to him by the Consultative Panel in performance of the duty in head (2)⁶.

For the purposes of the law of defamation the publication of any advice by the Consultative Panel in the exercise of any of its functions is absolutely privileged⁷.

1 The Courts and Legal Services Act 1990 s 18A (added by the Access to Justice Act 1999 s 35(2)) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(c), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the establishment of the Legal Services Consultative Panel see PARA 328.

3 Courts and Legal Services Act 1990 s 18A(3)(a) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

The Consultative Panel may, in performance of the duty in the Courts and Legal Services Act 1990 s 18A(3)(a), seek information from or give advice to any body or person: s 18A(4) (as so added and prospectively repealed).

The Secretary of State must consider any recommendations made to him by the Consultative Panel in performance of the duty in s 18A(3)(a): s 18A(5) (as so added and prospectively repealed; amended by SI 2003/1887).

4 Courts and Legal Services Act 1990 s 18A(3)(b) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 s 18A(3)(c) (as added and prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 s 18A(6) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

The Secretary of State must make available to the Consultative Panel appropriate administrative support and may pay to any of the persons forming it any such allowances, and make any such reimbursement of expenses, as he considers appropriate: Courts and Legal Services Act 1990 s 18A(7) (as so added and prospectively repealed; amended by SI 2003/1887).

7 Courts and Legal Services Act 1990 s 18A(8) (as added and prospectively repealed (see note 1)).

UPDATE

**327-357 Establishment of the Legal Services Consultative Panel ...
Consideration by Secretary of State**

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(i) Designation of Authorised Bodies and Approval of Regulations and Rules/329. Application to the Secretary of State.

(4) AUTHORISED BODIES UNDER THE

(i) Designation of Authorised Bodies and Approval of Regulations and Rules

329. Application to the Secretary of State.

Until a day to be appointed the following provisions have effect¹. In order to be designated as an authorised body² for the purposes of granting rights of audience or rights to conduct litigation³ a professional or other body must apply to the Secretary of State in writing⁴ for him to recommend that an Order in Council be made designating that body⁵ as an authorised body for the purpose of granting such rights⁶ and to approve what the body proposes as qualification regulations and rules of conduct in relation to the proposed rights⁷.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 'Authorised body' and 'appropriate authorised body':

55 (1) in relation to any right of audience or proposed right of audience have the meanings given by the Courts and Legal Services Act 1990 s 27 (see PARA 497) (s 119(1) (definitions prospectively repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 12 paras 83, 97(1), Sch 23));

56 (2) in relation to any right to conduct litigation or proposed right to conduct litigation have the meanings given in the Courts and Legal Services Act 1990 s 28 (see PARA 498) (s 119(1) (as so prospectively repealed)).

As to the meaning of 'right of audience' see PARA 495 note 3; and as to the meaning of 'right to conduct litigation' see PARA 495 note 4.

3 le for the purposes of the Courts and Legal Services Act 1990 ss 27, 28: see PARAS 497-498.

4 Courts and Legal Services Act 1990 s 29, Sch 4 para 1(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

5 The Institute of Trade Mark Attorneys has been designated as an authorised body for the purposes of the Courts and Legal Services Act 1990 ss 27, 28 (see PARAS 497-498): see the Institute of Trade Mark Attorneys Order 2005, SI 2005/240. As to the Institute of Trade Mark Attorneys see **TRADE MARKS AND TRADE NAMES**. By virtue of the Access to Justice Act 1999 Sch 14 para 17(1), the Institute of Legal Executives Order 1998, SI 1998/1077, has effect as if made under the Courts and Legal Services Act 1990 Sch 4 and consequently the Institute of Legal Executives is an authorised body for purposes of granting a right of audience: see the Institute of Legal Executives Order 1998, SI 1998/1077. The Association of Law Costs Draftsmen has also been designated as an authorised body for the purposes of the Courts and Legal Services Act 1990 ss 27, 28: see the Association of Law Costs Draftsmen Order 2006, SI 2006/3333.

6 le for the purposes of the Courts and Legal Services Act 1990 s 27 (see PARA 497) or for the purposes of s 28 (see PARA 498).

7 Courts and Legal Services Act 1990 Sch 4 para 1(1) (as substituted and prospectively repealed (see note 1) and as amended (see note 4)). An application under Sch 4 para 1 must be accompanied by a statement of

the proposed rights, the proposed qualification regulations and rules of conduct and such explanatory material (including material about the applicant's constitution and activities) as the applicant considers is likely to be needed for the purposes of Sch 4 paras 1-7): Sch 4 para 1(2) (as so substituted and prospectively repealed). The applicant must provide the Secretary of State with such additional information as he may reasonably require: Sch 4 para 1(3) (as so substituted and prospectively repealed; amended by SI 2003/1887). The Secretary of State must send a copy of the application and accompanying material and any information provided under the Courts and Legal Services Act 1990 Sch 4 para 1(4) to the Legal Services Consultative Panel, the Office of Fair Trading and each of the designated judges: Sch 4 para 1(4) (as so substituted and prospectively repealed; amended by the Enterprise Act 2002 Sch 25, para 23(1), (10)(a); and SI 2003/1887). As to the meaning of 'qualification regulations' and 'rules of conduct', in relation to any right of audience or proposed right of audience, see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct', in relation to the right to conduct litigation or proposed right to conduct litigation, see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules', in relation to a body, see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'designated judge' see PARA 333 note 2.

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(i) Designation of Authorised Bodies and Approval of Regulations and Rules/330. Advice of the Consultative Panel.

330. Advice of the Consultative Panel.

Until a day to be appointed the following provisions have effect¹. The Legal Services Consultative Panel² must consider whether the application should be granted³ and when it has completed its consideration it must give such advice to the Secretary of State as it thinks fit⁴. The applicant must provide the Consultative Panel with such additional information as it may reasonably require⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Consultative Panel see PARAS 327-328.

3 Courts and Legal Services Act 1990 Sch 4 para 2(1) (as substituted and prospectively repealed: see note 1).

4 Courts and Legal Services Act 1990 Sch 4 para 2(3) (as substituted and prospectively repealed (see note 1) and amended by SI 2003/1887). The Consultative Panel must publish any advice given by it under the Courts and Legal Services Act 1990 Sch 4 para 2: Sch 4 para 2(4) (as so substituted and prospectively repealed).

5 Courts and Legal Services Act 1990 Sch 4 para 2(2) (as substituted and prospectively repealed: see note 1).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(i) Designation of Authorised Bodies and Approval of Regulations and Rules/331. Advice of the Office of Fair Trading.

331. Advice of the Office of Fair Trading.

Until a day to be appointed the following provisions have effect¹. The Office of Fair Trading must consider whether granting the application would have, or be likely to have, any significant effect on competition² and when it has completed its consideration it must give such advice to the Secretary of State as it thinks fit³. The applicant must provide the Office of Fair Trading with such additional information as it may reasonably require⁴.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 3(1) (as so substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002, Sch 24 paras 2-6). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

3 Courts and Legal Services Act 1990 Sch 4 para 3(3) (as substituted and prospectively repealed (see note 1); and as amended (see note 2)). The Office of Fair Trading must publish any advice given by it under Sch 4 para 3: Sch 4 para 3(4) (as so substituted, amended and prospectively repealed). The Office of Fair Trading must, so far as practicable, exclude from anything published under Sch 4 para 3(4) any matter which relates to the affairs of a particular person (other than the applicant) the publication of which would, or might in its opinion, seriously and prejudicially affect the interests of that person: Sch 4 para 3(5) (as so substituted, amended and prospectively repealed). Section 46 applies in relation to the investigation of any matter with a view to its consideration under Sch 4 para 3 as it applies in relation to the investigation of any matter under s 45: Sch 4 para 3(6) (as so substituted and prospectively repealed).

4 Courts and Legal Services Act 1990 Sch 4 para 3(2) (as substituted and prospectively repealed (see note 1); and amended (see note 2)).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(i) Designation of Authorised Bodies and Approval of Regulations and Rules/332. Representations by the applicant.

332. Representations by the applicant.

Until a day to be appointed the following provisions have effect¹. When the Secretary of State has received the advice of the Legal Services Consultative Panel² and the Office of Fair Trading³ he must send a copy of the advice to the applicant⁴. The applicant must be allowed a period of 28 days beginning with the day on which the copy is sent to him, or such other period as the applicant and the Secretary of State may agree to make representations about the advice to the Secretary of State⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that panel see PARA 330.

3 As to the advice of the Office of Fair Trading see PARA 331.

4 Courts and Legal Services Act 1990 Sch 4 para 4(1) (as substituted and prospectively repealed (see note 1); and amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 4(2) (as substituted and prospectively repealed (see note 1); and amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(i) Designation of Authorised Bodies and Approval of Regulations and Rules/333. Advice of designated judges.

333. Advice of designated judges.

Until a day to be appointed the following provisions have effect¹. The Secretary of State must send to each of the designated judges² a copy of the advice of the Legal Services Consultative Panel³ and the Office of Fair Trading⁴ and any representations made by the applicant⁵. Each of the designated judges must then consider whether the application should then be granted⁶. The applicant must provide each of the designated judges with such additional information as he may reasonably require⁷. Where each of the designated judges has completed his consideration he must give such advice to the Secretary of State as he thinks fit⁸.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 'Designated judge' means the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division or the Chancellor of the High Court: Courts and Legal Services Act 1990 s 119(1) (amended by the Constitutional Reform Act 2005 Sch 4 paras 211, 216).

3 As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that panel see PARA 330.

4 As to the advice of the Office of Fair Trading see PARA 331.

5 Courts and Legal Services Act 1990 Sch 4 para 5(1) (as substituted and prospectively repealed (see note 1); and amended by the Enterprise Act 2002 Sch 23(1), (10)(a) and SI 2003/1887). Representations made by the applicant mentioned in the text are representations made under the Courts and Legal Services Act 1990 Sch 4 para 4(2) (see PARA 332).

6 Courts and Legal Services Act 1990 Sch 4 para 5(2) (as substituted and prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 Sch 4 para 5(3) (as substituted and prospectively repealed: see note 1).

8 Courts and Legal Services Act 1990 Sch 4 para 5(4) (as substituted and prospectively repealed (see note 1); and amended by the Enterprise Act 2002 Sch 23(1), (10)(a)).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(i) Designation of Authorised Bodies and Approval of Regulations and Rules/334. Decision by the Secretary of State.

334. Decision by the Secretary of State.

Until a day to be appointed the following provisions have effect¹. After considering the advice given by the Legal Services Consultative Panel and any representations made about it², the advice given by the Office of Fair Trading and any representations made about it³ and the advice given by each of the designated judges⁴, the Secretary of State must decide whether to grant the application⁵. When the Secretary of State has made his decision he must notify the applicant of it and if the Secretary of State has decided to refuse the application he must also notify the applicant of the reasons for his decision⁶.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that panel see PARA 330.

3 As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to the advice of that office see PARA 331.

4 See PARA 333. As to the meaning of 'designated judge' see PARA 333 note 2.

5 Courts and Legal Services Act 1990 Sch 4 para 6(1) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 4 para 6(2), (3) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(i) Designation of Authorised Bodies and Approval of Regulations and Rules/335. Effect of grant of application.

335. Effect of grant of application.

Until a day to be appointed the following provisions have effect¹. Where an application is granted the Secretary of State may recommend that an Order in Council be made designating the body as an authorised body for the purposes of granting rights of audience² or for the purposes of granting rights to conduct litigation³ and the proposed regulations and rules are approved as qualification regulations and rules of conduct in relation to the proposed rights⁴.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 *I*e for the purposes of the Courts and Legal Services Act 1990 s 27 (see PARA 497). As to the meaning of 'authorised body' see PARA 329 note 2. As to the meaning of 'right of audience' see PARA 495 note 3.

3 *I*e for the purposes of the Courts and Legal Services Act 1990 s 28 (see PARA 498). As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

4 Courts and Legal Services Act 1990 Sch 4 para 7 (as substituted and prospectively repealed: see note 1). At the date at which this volume states the law no such orders had been made. As to the meaning of 'qualification regulations' and 'rules of conduct', in relation to any right of audience or proposed right of audience, see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct', in relation to the right to conduct litigation or proposed right to conduct litigation, see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules', in relation to a body, see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/336. Requirement of approval.

(ii) Approval of Altered Regulations, Rules or Rights

336. Requirement of approval.

Until a day to be appointed the following provisions have effect¹. If an authorised body² makes an alteration of its qualification regulations or rules of conduct³, the alteration must not have effect unless approved by the Secretary of State⁴. If an authorised body makes an alteration of any rights of audience⁵ granted by it (including the grant of a new right of audience) or any rights to conduct litigation⁶ granted by it (including the grant of a new right to conduct litigation), the qualification regulations and rules of conduct of the body must not have effect in relation to the rights as altered unless approved by the Secretary of State⁷.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'authorised body' see PARA 329 note 2.

3 As to the meaning of 'qualification regulations' and 'rules of conduct', in relation to any right of audience or proposed right of audience, see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct', in relation to the right to conduct litigation or proposed right to conduct litigation, see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules', in relation to a body, see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

4 Courts and Legal Services Act 1990 Sch 4 para 8(1) (as substituted and prospectively repealed (see note 1); and amended by SI 2003/1887). As to the application for approval see PARA 337 and as to the effect of approval see PARA 344.

5 As to the meaning of 'rights of audience' see PARA 495 note 3.

6 As to the meaning of 'rights to conduct litigation' see PARA 495 note 4.

7 Courts and Legal Services Act 1990 Sch 4 para 8(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). If a question arises as to whether approval is required by virtue of the Courts and Legal Services Act 1990 Sch 4 para 8 it is for the Secretary of State to decide: Sch 4 para 8(3) (as so substituted and prospectively repealed; amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/337. Application to Secretary of State.

337. Application to Secretary of State.

Until a day to be appointed the following provisions have effect¹. An application by a body for the Secretary of State to approve an alteration of qualification regulations or rules of conduct², or qualification regulations or rules of conduct in relation to altered rights, must be made in writing³. The application must be accompanied by the qualification regulations and rules of conduct, a statement of the alteration of the regulations, rules or rights and such explanatory material as the applicant considers is likely to be needed⁴.

The applicant must provide the Secretary of State with such additional information as he may reasonably require⁵.

The Secretary of State must send a copy of the application and accompanying material and any information provided⁶ to each of the designated judges⁷ and consider whether it would be appropriate to seek the advice of either or both of the Legal Services Consultative Panel and the Office of Fair Trading⁸.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to any right of audience or proposed right of audience see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to the right to conduct litigation or proposed right to conduct litigation see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules' in relation to a body see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

3 Courts and Legal Services Act 1990 Sch 4 para 9(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

4 Courts and Legal Services Act 1990 Sch 4 para 9(2) (as substituted and prospectively repealed: see note 1).

5 Courts and Legal Services Act 1990 Sch 4 para 9(3) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

6 The information provided under the Courts and Legal Services Act 1990 Sch 4 para 9(3).

7 As to the meaning of 'designated judge' see PARA 333 note 2.

8 Courts and Legal Services Act 1990 Sch 4 para 9(4) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25, para 23(1), (10)(a) and SI 2003/1887). As to the Legal Services Consultative Panel see PARAS 327-328. As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

UPDATE

**327-357 Establishment of the Legal Services Consultative Panel ...
Consideration by Secretary of State**

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/338. Early advice of designated judges.

338. Early advice of designated judges.

Until a day to be appointed the following provisions have effect¹. If the Secretary of State considers that it would not be appropriate to seek the advice of the Legal Services Consultative Panel² or the Office of Fair Trading³, he must inform each of the designated judges⁴ that that is his view and may inform each of them of his provisional view as to whether or not the application should be granted⁵. If so informed, each of the designated judges must consider whether the application should be granted⁶ and the applicant must provide each of the designated judges with such additional information as he may reasonably require⁷.

When each of the designated judges has completed his consideration he must give such advice to the Secretary of State as he thinks fit⁸ who, after considering such advice, must consider again whether or not it would be appropriate to seek the advice of either or both of the Legal Services Consultative Panel and the Office of Fair Trading, before deciding whether to grant the application⁹.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that panel see PARA 339.

3 As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to the advice of that office see PARA 340.

4 As to the meaning of designated judge see PARA 333 note 2.

5 Courts and Legal Services Act 1990 Sch 4 para 10(1) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 4 para 10(2) (as substituted and prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 Sch 4 para 10(3) (as substituted and prospectively repealed: see note 1).

8 Courts and Legal Services Act 1990 Sch 4 para 10(4) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

9 Courts and Legal Services Act 1990 Sch 4 para 10(5) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/339. Advice of the Consultative Panel.

339. Advice of the Consultative Panel.

Until a day to be appointed the following provisions have effect¹. If the Secretary of State decides² to seek the advice of the Legal Services Consultative Panel (the 'Consultative Panel'), he must send to the Consultative Panel a copy of the application and accompanying material³.

The applicant must provide the Consultative Panel with such additional information as it may reasonably require⁴. The Consultative Panel must consider whether the application should be granted⁵ and when it has completed its consideration it must give such advice to the Secretary of State as it thinks fit⁶.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 He after considering the matter under the Courts and Legal Services Act 1990 Sch 4 para 9(4)(b) (see PARA 362) or Sch 4 para 10(5) (see PARA 338).

3 Courts and Legal Services Act 1990 Sch 4 para 11(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). The Secretary of State must also send to the Consultative Panel any information provided under the Courts and Legal Services Act 1990 Sch 4 para 9(3) (see PARA 337); Sch 4 para 11(1)(b) (as so substituted and prospectively repealed).

4 Courts and Legal Services Act 1990 Sch 4 para 11(3) (as substituted and prospectively repealed: see note 1).

5 Courts and Legal Services Act 1990 Sch 4 para 11(2) (as substituted and prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 Sch 4 para 11(4) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). The Consultative Panel must publish any advice given by it under the Courts and Legal Services Act 1990 Sch 4 para 11: Sch 4 para 11(5) (as so as substituted and prospectively repealed).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/340. Advice of the Office of Fair Trading.

340. Advice of the Office of Fair Trading.

Until a day to be appointed the following provisions have effect¹. If the Secretary of State decides² to seek the advice of the Office of Fair Trading, he must send it a copy of the application and accompanying material³. The applicant must provide the Office of Fair Trading with such additional information as it may reasonably require⁴.

The Office of Fair Trading must consider whether granting the application would have, or be likely to have, any significant effect on competition⁵ and when it has completed its consideration it must give such advice to the Secretary of State as it thinks fit⁶.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 He after considering the matter under the Courts and Legal Services Act 1990 Sch 4 para 9(4)(b) (see PARA 337) or Sch 4 para 10(5) (see PARA 338).

3 Courts and Legal Services Act 1990 Sch 4 para 12(1) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887). The Secretary of State must also send to the Office of Fair Trading any information provided under the Courts and Legal Services Act 1990 Sch 4 para 9(3) (see PARA 337): Sch 4 para 12(1)(b) (as so substituted and prospectively repealed). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

4 Courts and Legal Services Act 1990 Sch 4 para 12(3) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (c)(i)).

5 Courts and Legal Services Act 1990 Sch 4 para 12(2) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a)).

6 Courts and Legal Services Act 1990 Sch 4 para 12(4) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (c)(ii) and SI 2003/1887). The Office of Fair Trading must publish any advice given by it under the Courts and Legal Services Act 1990 Sch 4 para 12 but must, so far as practicable, exclude from anything so published any matter which relates to the affairs of a particular person (other than the applicant) the publication of which would, or might in its opinion, seriously and prejudicially affect the interests of that person: Sch 4 para 12(5), (6) (as so substituted and prospectively repealed; amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (c)(ii), (iii) and SI 2003/1887). The Courts and Legal Services Act 1990 s 46 (not yet in force and prospectively repealed) applies in relation to the investigation of any matter with a view to its consideration under Sch 4 para 12 as it applies in relation to the investigation of any matter under s 45 (not yet in force and prospectively repealed): Sch 4 para 12(7) (as so substituted and prospectively repealed).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/341. Representations by applicant.

341. Representations by applicant.

Until a day to be appointed the following provisions have effect¹. If the Secretary of State has sought the advice of the Legal Services Consultative Panel or the Office of Fair Trading he must, on receiving it, send a copy to the applicant². The applicant must be allowed a period of 28 days beginning with the day on which the copy is sent to him, or such other period as the applicant and the Secretary of State may agree, to make representations about the advice to the Secretary of State³.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 13(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that Panel see PARA 339. As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq and as to the advice of that office see PARA 340.

3 Courts and Legal Services Act 1990 Sch 4 para 13(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/342. Advice of designated judges.

342. Advice of designated judges.

Until a day to be appointed the following provisions have effect¹. If the Secretary of State has sought the advice of the Legal Services Consultative Panel or the Office of Fair Trading² he must, on receiving it, send to each of the designated judges³ a copy of the advice and any representations made⁴. The applicant must provide each of the designated judges with such additional information as he may reasonably require⁵.

Each of the designated judges must consider (or consider again) whether the application should be granted⁶ and when each of the designated judges has completed his consideration he must give such advice to the Secretary of State as he thinks fit⁷.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that Panel see PARA 339. As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq and as to advice provided by that office see PARA 340.

3 As to the meaning of 'designated judge' see PARA 333 note 2.

4 Courts and Legal Services Act 1990 Sch 4 para 14(1) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887). Any representations mentioned in the text are any representations made under the Courts and Legal Services Act 1990 Sch 4 para 13(2) (see PARA 341).

5 Courts and Legal Services Act 1990 Sch 4 para 14(3) (as substituted and prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 Sch 3 para 14(2) (as substituted and prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 Sch 3 para 14(4) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/343. Decision by the Secretary of State.

343. Decision by the Secretary of State.

Until a day to be appointed the following provisions have effect¹. After considering:

- 84 (1) any advice given by the Legal Services Consultative Panel and any representations made about it²;
- 85 (2) any advice given by the Office of Fair Trading and any representations made about it³; and
- 86 (3) the advice given by each of the designated judges⁴,

the Secretary of State must decide whether to grant the application⁵.

The Secretary of State may not refuse the application unless he has received advice from the Legal Services Consultative Panel⁶.

When the Secretary of State has made his decision he must notify the applicant of it⁷ and if he has decided to refuse the application he must also notify the applicant of the reasons for his decision⁸.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 15(1)(a) (as substituted and prospectively repealed: see note 1). As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that Panel see PARA 339.

3 Courts and Legal Services Act 1990 Sch 4 para 15(1)(b) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a)). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq and as to advice provided by that office see PARA 340.

4 Courts and Legal Services Act 1990 Sch 4 para 15(1)(c) (as substituted and prospectively repealed: see note 1). The advice mentioned in the text refers to advice given by the designated judges under Sch 4 para 10 (see PARA 338) or Sch 4 para 14 (see PARA 342) or both. As to the meaning of 'designated judge' see PARA 333 note 2.

5 Courts and Legal Services Act 1990 Sch 4 para 15(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 4 para 15(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

7 Courts and Legal Services Act 1990 Sch 4 para 15(3) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

8 Courts and Legal Services Act 1990 Sch 4 para 15(4) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

**327-357 Establishment of the Legal Services Consultative Panel ...
Consideration by Secretary of State**

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(ii) Approval of Altered Regulations, Rules or Rights/344. Effect of grant of application.

344. Effect of grant of application.

Until a day to be appointed the following provisions have effect¹. Where an application by an authorised body² for the Secretary of State to approve an alteration of its qualification regulations or rules of conduct³ is granted, the alteration of the qualification regulations or rules of conduct is approved⁴. Where an application by an authorised body for the Secretary of State to approve qualification regulations or rules of conduct in relation to altered rights⁵ is granted, the qualification regulations or rules of conduct are approved in relation to the rights as altered⁶.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'authorised body' see PARA 329 note 2.

3 In a case within the Courts and Legal Services Act 1990 Sch 4 para 8(1) (see PARA 336). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to any right of audience or proposed right of audience see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to conduct litigation or proposed right to conduct litigation see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules' in relation to a body see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

4 Courts and Legal Services Act 1990 Sch 4 para 16(a) (as substituted and prospectively repealed: see note 1).

5 In a case within the Courts and Legal Services Act 1990 Sch 4 para 8(2) (see PARA 336).

6 Courts and Legal Services Act 1990 Sch 4 para 16(b) (as substituted and prospectively repealed: see note 1).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iii) Alteration of Regulations and Rules by Order/345. Notice to authorised body.

(iii) Alteration of Regulations and Rules by Order

345. Notice to authorised body.

Until a day to be appointed the following provisions have effect¹. If the Secretary of State considers that any of the qualification regulations of an authorised body² may unduly restrict a right of audience or right to conduct litigation or the exercise of such a right or that any of the rules of conduct³ of an authorised body may unduly restrict the exercise of such a right, he may give written notice to the body⁴. However before giving such notice the Secretary of State must inform each of the designated judges that he intends to do so⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'authorised body' see PARA 329 note 2. As to the meaning of 'qualification regulations' in relation to any right of audience or proposed right of audience see PARA 497 note 8 (definition applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' in relation to the right to conduct litigation or proposed right to conduct litigation see PARA 498 note 7. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' in relation to a body see the Legal Services Act 2007 s 21; and PARA 377 note 7 (definition applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'right of audience' see PARA 495 note 3. As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

3 As to the meaning of 'rules of conduct' in relation to any right of audience or proposed right of audience see PARA 497 note 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'rules of conduct' in relation to the right to conduct litigation or proposed right to conduct litigation see PARA 498 note 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'conduct rules' in relation to a body see the Legal Services Act 2007 s 21; and PARA 377 notes 5 (definition applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

4 Courts and Legal Services Act 1990 Sch 4 para 17(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 17(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). As to the meaning of 'designated judge' see PARA 333 note 2.

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iii) Alteration of Regulations and Rules by Order/346. Representations by authorised body.

346. Representations by authorised body.

Until a day to be appointed the following provisions have effect¹. The notice must invite the authorised body² to make representations in writing to the Secretary of State³. Any such representations must be made before the end of the period of three months beginning with the date on which the notice was given or such other period as the authorised body and the Secretary of State may agree⁴. When that period has expired the Secretary of State must consider, in the light of any representations made whether he proposes to make alterations of the qualification regulations or rules of conduct⁵. If the Secretary of State proposes to make alterations of the qualification regulations or rules of conduct he must send a copy of the alterations which he proposes to make and any representations⁶, to the Legal Services Consultative Panel, the Office of Fair Trading and each of the designated judges⁷.

When the Secretary of State has received the advice of the Legal Services Consultative Panel and the Office of Fair Trading, he must send a copy of the advice to the authorised body⁸.

The authorised body must be allowed a period of 28 days, beginning with the day on which the copy is sent to him, or such other period as the authorised body and the Secretary of State may agree, to make representations about the advice to the Secretary of State⁹.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'authorised body' see PARA 329 note 2.

3 Courts and Legal Services Act 1990 Sch 4 para 18(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

4 Courts and Legal Services Act 1990 Sch 4 para 18(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 18(3) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to any right of audience or proposed right of audience see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to the right to conduct litigation or proposed right to conduct litigation see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules' in relation to a body see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

6 ie representations made under the Courts and Legal Services Act 1990 Sch 4 para 18(2).

7 Courts and Legal Services Act 1990 Sch 4 para 18(4) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). As to the meaning of 'designated judge' see PARA 333 note 2. As to the Legal Services Consultative Panel see PARAS 327-328. As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

8 Courts and Legal Services Act 1990 Sch 4 para 21(1) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

9 Courts and Legal Services Act 1990 Sch 4 para 21(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

**327-357 Establishment of the Legal Services Consultative Panel ...
Consideration by Secretary of State**

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iii) Alteration of Regulations and Rules by Order/347. Advice of the Consultative Panel.

347. Advice of the Consultative Panel.

Until a day to be appointed the following provisions have effect¹. The Legal Services Consultative Panel must consider whether alterations should be made². The Secretary of State and the authorised body³ must provide the Legal Services Consultative Panel with such additional information as it may reasonably require⁴.

When the Legal Services Consultative Panel has completed its consideration it must give such advice to the Secretary of State as it thinks fit⁵ and must publish any advice so given⁶.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 19(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). As to the Legal Services Consultative Panel see PARAS 327-328. The alterations mentioned in the text are the alterations proposed by the Secretary of State to the qualification regulations or rules of conduct: see PARA 346.

3 As to the meaning of 'authorised body' see PARA 329 note 2.

4 Courts and Legal Services Act 1990 Sch 4 para 19(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 19(3) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 4 para 19(4) (as substituted and prospectively repealed: see note 1).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iii) Alteration of Regulations and Rules by Order/348. Advice of the Office of Fair Trading.

348. Advice of the Office of Fair Trading.

Until a day to be appointed the following provisions have effect¹. The Office of Fair Trading must consider whether making the alterations would have, or be likely to have, any significant effect on competition². The Secretary of State and the authorised body³ must provide the Office of Fair Trading with such additional information as it may reasonably require⁴. When the Office of Fair Trading has completed its consideration it must give such advice to the Secretary of State as it thinks fit⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 20(1) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(d)). The alterations mentioned in the text are the alterations proposed by the Secretary of State to the qualification regulations or rules of conduct: see PARA 346.

3 As to the meaning of 'authorised body' see PARA 329 note 2.

4 Courts and Legal Services Act 1990 Sch 4 para 20(2) (as substituted and prospectively repealed (see note 1); amended by Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (d)(i) and SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 20(3) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (d)(ii) and SI 2003/1887). The Office of Fair Trading must publish any advice given by it under the Courts and Legal Services Act 2002 Sch 4 para 20 but must, so far as practicable, exclude from anything published under Sch 4 para 20(4) any matter which relates to the affairs of a particular person (other than the authorised body) the publication of which would, or might in its opinion, seriously and prejudicially affect the interests of that person: Sch 4 para 20(4), (5) (as so substituted and prospectively repealed: amended by the Enterprise Act 2002 Sch 23(1), (10)(a), (d)(iii)). The Courts and Legal Services Act 1990 s 46 (not yet in force and prospectively repealed) must apply in relation to the investigation of any matter with a view to its consideration under Sch 4 para 20 as it applies in relation to the investigation of any matter under s 45 (not yet in force and prospectively repealed): Sch 4 para 20(6) (as so substituted and prospectively repealed).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iii) Alteration of Regulations and Rules by Order/349. Advice of designated judges.

349. Advice of designated judges.

Until a day to be appointed the following provisions have effect¹. The Secretary of State must send to each of the designated judges² a copy of the advice of the Legal Services Consultative Panel and the Office of Fair Trading³. Each of the designated judges must then consider whether the alterations should be made⁴.

The Secretary of State and the authorised body⁵ must provide each of the designated judges with such additional information as he may reasonably require⁶.

When each of the designated judges has completed his consideration he must give such advice to the Secretary of State as he thinks fit⁷.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'designated judge' see PARA 333 note 2.

3 Courts and Legal Services Act 1990 Sch 4 para 22(1) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887). The Secretary of State must also send a copy of any representations made under the Courts and Legal Services Act 1990 Sch 4 para 21(2) (see PARA 346): Sch 4 para 22(1)(b) (as so substituted and prospectively repealed).

4 Courts and Legal Services Act 1990 Sch 4 para 22(2) (as substituted and prospectively repealed: see note 1). The alterations mentioned in the text are the alterations proposed by the Secretary of State to the qualification regulations or rules of conduct: see PARA 346.

5 As to the meaning of 'authorised body' see PARA 329 note 2.

6 Courts and Legal Services Act 1990 Sch 4 para 22(3) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

7 Courts and Legal Services Act 1990 Sch 4 para 22(4) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iii) Alteration of Regulations and Rules by Order/350. Decision by Secretary of State.

350. Decision by Secretary of State.

Until a day to be appointed the following provisions have effect¹. After considering:

- 87 (1) the advice given by the Legal Services Consultative Panel and any representations made about it²;
- 88 (2) the advice given by the Office of Fair Trading and any representations made about it³; and
- 89 (3) the advice given by each of the designated judges⁴,

the Secretary of State must decide whether to make the alterations⁵.

When the Secretary of State has made his decision he must notify the authorised body of it⁶ and if the Secretary of State has decided to make the alterations he must also notify the authorised body of the reasons for his decision⁷. If the Secretary of State has decided to make the alterations he may make an order giving effect to the alterations⁸.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 23(1)(a) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

3 Courts and Legal Services Act 1990 Sch 4 para 23(1)(b) (as substituted and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a)).

4 Courts and Legal Services Act 1990 Sch 4 para 23(1)(a) (as substituted and prospectively repealed (see note 1)). The advice mentioned in the text refers to advice given under Sch 4 para 22 (see PARA 349). As to the meaning of 'designated judge' see PARA 333 note 2.

5 Courts and Legal Services Act 1990 Sch 4 para 23(1) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). The alterations mentioned in the text are the alterations proposed by the Secretary of State to the qualification regulations or rules of conduct: see PARA 346.

6 Courts and Legal Services Act 1990 Sch 4 para 23(2) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887). As to the meaning of 'authorised body' see PARA 329 note 2.

7 Courts and Legal Services Act 1990 Sch 4 para 23(3) (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

8 Courts and Legal Services Act 1990 Sch 4 para 24 (as substituted and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iv) Revocation of Designation/351. Order in Council.

(iv) Revocation of Designation

351. Order in Council.

Until a day to be appointed the following provisions have effect¹. Where an Order in Council has been made designating a body as an authorised body², the Secretary of State may recommend to Her Majesty that an Order in Council be made revoking that designation³.

A recommendation may be made only if the authorised body has made a written request to the Secretary of State asking for it to be made and has agreed in writing to its being made⁴ or the Secretary of State is satisfied that the circumstances at the time when he is considering whether to make the recommendation are such that, had that body then been applying to become an authorised body, its application would have failed⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Ie for the purposes of the Courts and Legal Services Act 1990 s 27 (see PARA 497) or s 28 (see PARA 498). As to the meaning of 'authorised body' see PARA 329 note 2.

3 Courts and Legal Services Act 1990 Sch 4 para 25(1) (as added and prospectively repealed (see note 1); amended by SI 2003/1887). At the date at which this volume states the law no such day had been appointed. An Order made in pursuance of a recommendation under the Courts and Legal Services Act 1990 Sch 4 para 25 may include any appropriate transitional and incidental provision: Sch 4 para 33(1) (as added and prospectively repealed). Where an Order is made in relation to a body in pursuance of such a recommendation, the grant of any rights of audience, or rights to conduct litigation, to any person by the body ceases to have effect, subject to any transitional provision included in the Order: Sch 4 para 33(2) (as so added and prospectively repealed). Where such an Order is made, the Secretary of State must give the body written notice of the making of the Order and of his reasons for recommending that it be made, take such steps as are reasonably practicable to bring the making of the Order to the attention of the members of that body and publish notice of the making of the Order in such manner as he considers appropriate for bringing it to the attention of persons (other than those members) who, in his opinion, are likely to be affected by the Order: Sch 4 para 33(3) (as so added and prospectively repealed; amended by SI 2003/1887). 'Member', in relation to any professional or other body, other than any body established by the Courts and Legal Services Act 1990, includes any person who is not a member of that body but who may be subject to disciplinary sanctions for failure to comply with any of that body's rules: s 119(1). As to solicitors' disciplinary rules see PARA 629 et seq.

4 Courts and Legal Services Act 1990 Sch 4 para 25(2)(a), (b) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 25(2)(c) (as added and prospectively repealed (see note 1); amended by SI 2003/1887). Where the Secretary of State considers that it may be appropriate for him to make a recommendation in reliance on Sch 4 para 25(2)(c) he must seek the advice of the Legal Services Consultative Panel and the Office of Fair Trading: Sch 4 para 26 (as so added and prospectively repealed; amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iv) Revocation of Designation/352. Advice of the Consultative Panel.

352. Advice of the Consultative Panel.

Until a day to be appointed the following provisions have effect¹. The Consultative Panel must carry out such investigations with respect to the authorised body as it considers appropriate². The Secretary of State and the authorised body must provide the Consultative Panel with such additional information as it may reasonably require³.

When the Consultative Panel has completed its investigations it must advise the Secretary of State as to whether or not there appear to be grounds for making the recommendation and if its advice is that there appear to be such grounds, advise the Secretary of State as to the transitional and incidental provision (if any) which it considers should be included in any Order made in pursuance of it⁴.

The Consultative Panel must publish any advice so given by it⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 27(1) (as added and prospectively repealed: see note 1). As to the meaning of 'authorised body' see PARA 329 note 2.

3 Courts and Legal Services Act 1990 Sch 4 para 27(2) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

4 Courts and Legal Services Act 1990 Sch 4 para 27(3) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 27(4) (as added and prospectively repealed: see note 1).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iv) Revocation of Designation/353. Advice of the Office of Fair Trading.

353. Advice of the Office of Fair Trading.

Until a day to be appointed the following provisions have effect¹. The Office of Fair Trading must consider whether revoking the designation would have, or be likely to have, any significant effect on competition² and when the Office of Fair Trading has completed its consideration it must give such advice to the Secretary of State as it thinks fit³.

The Secretary of State and the authorised body⁴ must provide the Office of Fair Trading with such additional information as it may reasonably require⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 Sch 4 para 28(1) (as added and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a)).

3 Courts and Legal Services Act 1990 Sch 4 para 28(3) (as added and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (e)(ii) and SI 2003/1887). The Office of Fair Trading must publish any advice given by it under the Courts and Legal Services Act 1990 Sch 4 para 28: Sch 4 para 28(4) (as so added and prospectively repealed; amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (e)(iii)). However it must, so far as practicable, exclude from anything so published any matter which relates to the affairs of a particular person (other than the authorised body) the publication of which would, or might in its opinion, seriously and prejudicially affect the interests of that person: Courts and Legal Services Act 1990 Sch 4 para 28(5) (as so added and prospectively repealed; amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (e)(iv)). The Courts and Legal Services Act 1990 s 46 must apply in relation to the investigation of any matter with a view to its consideration under Sch 4 para 28 as it applies in relation to the investigation of any matter under s 45: Sch 4 para 28(6) (as added and prospectively repealed).

4 As to the meaning of 'authorised body' see PARA 329 note 2.

5 Courts and Legal Services Act 1990 Sch 4 para 28(2) (as added and prospectively repealed (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a), (e)(i) and SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iv) Revocation of Designation/354. Notice to authorised body.

354. Notice to authorised body.

Until a day to be appointed the following provisions have effect¹. When the Secretary of State has received the advice of the Legal Services Consultative Panel² and the Office of Fair Trading, he may give to the body a notice containing a copy of the advice and a statement of the effect of an order made in pursuance of the recommendation³.

The notice must invite the authorised body to make representations in writing to the Secretary of State⁴. Any such representations must be made before the end of the period of three months beginning with the date on which the notice was given or such other period as the authorised body and the Secretary of State may agree⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Consultative Panel see PARAS 327-328. As to the advice of that panel see PARA 352.

3 Courts and Legal Services Act 1990 Sch 4 para 29(1) (as added and prospectively repealed; amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

4 Courts and Legal Services Act 1990 Sch 4 para 29(2) (as added and prospectively repealed; amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 4 para 29(3) (as added and prospectively repealed; amended by SI 2003/1887). As to the meaning of 'authorised body' see PARA 329 note 2.

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iv) Revocation of Designation/355. Notice to members of authorised body.

355. Notice to members of authorised body.

Until a day to be appointed the following provisions have effect¹. Where the Secretary of State has given a notice to an authorised body² or is proposing to make a recommendation in relation to an authorised body³, he must take such steps as are reasonably practicable to bring the matter to the attention of the members⁴ of the authorised body and of any other persons who, in his opinion, are likely to be affected by an Order made in pursuance of the recommendation⁵.

Any such steps must include inviting those members and other persons to make representations to the Secretary of State and any such representations must, except in such circumstances as the Secretary of State may specify, be in writing and must be made before the end of the period of three months beginning with such date as may be specified by the Secretary of State⁶.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 I.e. under the Courts and Legal Services Act 1990 Sch 4 para 29(1) (see PARA 354). As to the meaning of 'authorised body' see PARA 329 note 2.

3 I.e. in reliance on the Courts and Legal Services Act 1990 Sch 4 para 25(2)(a), (b) (see PARA 351).

4 As to the meaning of 'member' see PARA 351 note 3.

5 Courts and Legal Services Act 1990 Sch 4 para 30(1) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 4 para 30(2), (3) (as added and prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iv) Revocation of Designation/356. Advice of designated judges.

356. Advice of designated judges.

Until a day to be appointed the following provisions have effect¹. The Secretary of State must send to each of the designated judges² a copy of any written representations made by authorised bodies³ and a note of any oral representations so made and, in a case where he is required to seek the advice of the Legal Services Consultative Panel⁴ and the Office of Fair Trading, a copy of the advice given to him by them and of any representations⁵ so made⁶.

The Secretary of State and the authorised body⁷ must provide each of the designated judges with such additional information as he may reasonably require⁸.

Each of the designated judges must then consider whether the Secretary of State should make the recommendation⁹ and when each of the designated judges has completed his consideration he must give such advice to the Secretary of State as he thinks fit¹⁰.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'designated judge' see PARA 333 note 2.

3 ie representations made under the Courts and Legal Services Act 1990 Sch 4 para 30 (see PARA 355).

4 As to the Legal Services Consultative Panel see PARAS 327-328. As to advice from that panel see PARA 352.

5 ie representations made under the Courts and Legal Services Act 1990 Sch 4 para 29 (see PARA 354).

6 Courts and Legal Services Act 1990 Sch 4 para 31(1) (as added and prospectively added (see note 1); amended by the Enterprise Act 2002 Sch 25 para 23(1), (10)(a) and SI 2003/1887).

7 As to the meaning of 'authorised body' see PARA 329 note 2.

8 Courts and Legal Services Act 1990 Sch 4 para 31(3) (as added and prospectively added (see note 1); amended by SI 2003/1887).

9 Courts and Legal Services Act 1990 Sch 4 para 31(2) (as added and prospectively added (see note 1); amended by SI 2003/1887).

10 Courts and Legal Services Act 1990 Sch 4 para 31(4) (as added and prospectively added (see note 1); amended by SI 2003/1887).

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(4) AUTHORISED BODIES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/(iv) Revocation of Designation/357. Consideration by Secretary of State.

357. Consideration by Secretary of State.

Until a day to be appointed the following provisions have effect¹. Before deciding whether to make a recommendation the Secretary of State must consider any representations made by authorised bodies² and the advice given by each of the designated judges³ and, in a case where he is required to seek the advice of the Legal Services Consultative Panel⁴ and the Office of Fair Trading, the advice given to him by them and of any representations so made⁵.

1 The Courts and Legal Services Act 1990 Sch 4 (Sch 4 paras 1-24 substituted and paras 25-33 added by the Access to Justice Act 1999 Sch 5 para 2) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 100(a), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 ie representations made under the Courts and Legal Services Act 1990 Sch 4 para 30 (see PARA 355).

3 As to the meaning of 'designated judge' see PARA 333 note 2.

4 As to the Legal Services Consultative Panel see PARAS 327-328.

5 Courts and Legal Services Act 1990 Sch 4 para 32 (as substituted and prospectively repealed; amended by SI 2003/1887). As to the advice of the Legal Services Consultative Panel see PARA 352 and as to the advice of the Office of Fair Trading see PARA 353.

UPDATE

327-357 Establishment of the Legal Services Consultative Panel ... Consideration by Secretary of State

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/A. GENERALLY/358. 'Approved regulator' and 'relevant approved regulator'.

(5) APPROVED REGULATORS UNDER THE

(i) Introduction

A. GENERALLY

358. 'Approved regulator' and 'relevant approved regulator'.

As from a day to be appointed the following provisions have effect¹. An approved regulator may authorise persons to carry on any activity which is a reserved legal activity² in respect of which it is a relevant approved regulator³.

For the purposes of the Legal Services Act 2007 'approved regulator' means:

- 90 (1) a body which is designated as an approved regulator under the relevant provisions⁴ and whose regulatory arrangements are approved for the purposes of the Legal Services Act 2007⁵; and
- 91 (2) if an order has been made designating it an approved regulator⁶, the Legal Services Board⁷.

An approved regulator is a 'relevant approved regulator' in relation to an activity which is a reserved legal activity if:

- 92 (a) the approved regulator is designated⁸ in relation to that reserved legal activity⁹; or
- 93 (b) where the approved regulator is the Board, it is designated in relation to that reserved legal activity by an appropriate order¹⁰.

An approved regulator is a 'relevant approved regulator' in relation to a person if the person is authorised by the approved regulator to carry on an activity which is a reserved legal activity¹¹.

1 The Legal Services Act 2007 ss 20, 67 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed for all purposes, but the definition of 'approved regulator' had been brought into force for the purposes of ss 69(4) (as modified: see PARA 375), 69(7) (see PARA 375), 172(1)(a) (see PARA 303), and Sch 22 paras 2(6), (7)(b), 5 (see PARA 303): see the Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, art 3. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activity' see PARA 512.

3 Legal Services Act 2007 s 20(6).

4 I.e. under the Legal Services Act 2007 Sch 4 Pt 1 or Sch 4 Pt 2 or both (see PARA 359 et seq). For the purposes of Pt 6 (ss 112-161) (and ss 1, 21, 27 as they apply in relation to Pt 6) the Claims Management Services Regulator is to be treated as an approved regulator: s 161(1)(a). 'Claims Management Services Regulator' means the person designated under the Compensation act 2006 s 5(1) (see **DAMAGES**) or, at a time when no person is so designated, the Legal Services Board: s 161(4). As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 s 20(1), (2)(a).

6 le under the Legal Services Act 2007 s 62(1)(a) (see PARA 367).

7 Legal Services Act 2007 s 20(1), (2)(b). The powers of the Board under ss 31-51, 55 (regulatory powers in respect of approved regulators) are not exercisable by it in relation to the Board in its capacity as an approved regulator: s 67(1). Sections 57-61 do not apply in relation to the Board in its capacity as an approved regulator: s 67(3).

8 le designated by the Legal Services Act 2007 Sch 4 Pt 1 or Pt 2 (see PARA 359 et seq).

9 Legal Services Act 2007 s 20(3)(a).

10 Legal Services Act 2007 s 20(3)(b). An appropriate order mentioned in the text refers to an order under s 62(1)(a) (see PARA 367).

11 Legal Services Act 2007 s 20(4).

UPDATE

358-359 'Approved regulator' and 'relevant approved regulator', Existing bodies as approved regulators

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/B. EXISTING BODIES/359. Existing bodies as approved regulators.

B. EXISTING BODIES

359. Existing bodies as approved regulators.

As from a day to be appointed the following provisions have effect¹. The following bodies are 'approved regulators'²:

- 94 (1) the Solicitors Regulatory Authority³;
- 95 (2) the Bar Standards Board⁴;
- 96 (3) the Master of the Faculties⁵;
- 97 (4) the Institute of Legal Executives⁶;
- 98 (5) the Council for Licensed Conveyancers⁷;
- 99 (6) the Chartered Institute of Patent Attorneys⁸;
- 100 (7) the Institute of Trade Mark Attorneys⁹;
- 101 (8) the Association of Law Costs Draftsmen¹⁰.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358. The regulatory arrangements of a body listed in heads (1)-(8) in the text, as they have effect immediately before Sch 4 para 1 comes into force, are to be treated as having been approved by the Legal Services Board for the purposes of the Legal Services Act 2007 at the time Sch 4 para 1 comes into force: Sch 4 para 2(1), (2). This is without prejudice to the Board's power to give directions under s 32 (powers to direct an approved regulatory to take steps in certain circumstances, including steps to amend its regulatory arrangements) (see PARA 388): Sch 4 para 2(3). As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 4 para 1(1) table. Schedule 4 refers to the Law Society. However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulator (see PARA 619 et seq). Accordingly the Solicitors Regulatory Authority is an approved regulator in relation to the following reserved legal activities:

- 57 (1) the exercise of a right of audience;
- 58 (2) the conduct of litigation;
- 59 (3) reserved instrument activities;
- 60 (4) probate activities;
- 61 (5) the administration of oaths.

As to the meaning of 'reserved legal activities' see PARA 512. As to the meanings of the 'exercise of a right of audience', the 'conduct of litigation', 'reserved instrument activities', 'probate activities' and the 'administration of oaths' see PARA 512 notes 3-8.

4 Legal Services Act 2007 Sch 4 para 1(1) table. Schedule 4 refers to the General Council of the Bar. However the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). Accordingly the Bar Standards Board is an approved regulator in relation to the following reserved legal activities:

- 62 (1) the exercise of a right of audience;

- 63 (2) the conduct of litigation;
- 64 (3) reserved instrument activities;
- 65 (4) probate activities;
- 66 (5) the administration of oaths.

5 Legal Services Act 2007 Sch 4 para 1(1) table. Accordingly the Master of the Faculties is an approved regulator in relation to the following reserved legal activities:

- 67 (1) reserved instrument activities;
- 68 (2) probate activities;
- 69 (3) notarial activities;
- 70 (4) the administration of oaths.

As to the Master of the Faculties see PARA 1413.

6 Legal Services Act 2007 Sch 4 para 1(1) table. Accordingly the Institute of Legal Executives is an approved regulator in relation to the following reserved legal activities:

- 71 (1) the exercise of a right of audience;
- 72 (2) the administration of oaths.

As to the Institute of Legal Executives see PARA 1465.

7 Legal Services Act 2007 Sch 4 para 1(1) table. Accordingly the Council for Licensed Conveyancers is an approved regulator in relation to the following reserved legal activities:

- 73 (1) reserved instrument activities;
- 74 (2) the administration of oaths.

As to the Council for Licensed Conveyancers see PARA 1320 et seq.

8 Legal Services Act 2007 Sch 4 para 1(1) table. Accordingly the Chartered Institute of Patent Attorneys is an approved regulator in relation to the following reserved legal activities:

- 75 (1) the exercise of a right of audience;
- 76 (2) the conduct of litigation;
- 77 (3) reserved instrument activities;
- 78 (4) the administration of oaths.

As to the Chartered Institute of Patent Attorneys see **PATENTS AND REGISTERED DESIGNS**.

9 Legal Services Act 2007 Sch 4 para 1(1) table. Accordingly the Institute of Trade Mark Attorneys is an approved regulator in relation to the following reserved legal activities:

- 79 (1) the exercise of a right of audience;
- 80 (2) the conduct of litigation;
- 81 (3) the administration of oaths.

As to the Institute of Trade Mark Attorneys see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 39.

10 Legal Services Act 2007 Sch 4 para 1(1) table. Accordingly the Association of Law Costs Draftsmen is an approved regulator in relation to the following reserved legal activities:

- 82 (1) the exercise of a right of audience;
- 83 (2) the conduct of litigation;

84 (3) the administration of oaths.

UPDATE

358-359 'Approved regulator' and 'relevant approved regulator', Existing bodies as approved regulators

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/C. DESIGNATION OF BODIES BY ORDER/360. Application.

C. DESIGNATION OF BODIES BY ORDER

360. Application.

As from a day to be appointed the following provisions have effect¹. Where a body wishes to authorise persons to carry on one or more activities which constitute one or more reserved legal activities² it may apply to the Legal Services Board³ for the Board:

- 102 (1) to recommend that an order be made by the Lord Chancellor designating the body as an approved regulator in relation to the reserved legal activity or activities in question⁴; and
- 103 (2) to approve what the body proposes as its regulatory arrangements if such an order is made (the 'proposed regulatory arrangements')⁵.

The proposed regulatory arrangements must, in particular, include:

- 104 (a) details of the authority which the applicant proposes to give persons to carry on activities which are reserved legal activities and of the nature of the persons to whom the authority is to be given⁶;
- 105 (b) regulations (however they may be described) as to the education and training which persons must receive, and any other requirements which must be met by or in respect of them, in order for them to be authorised⁷; and
- 106 (c) rules (however they may be described) as to the conduct required of persons in carrying on any activity by virtue of the authority⁸.

An applicant may, at any time, withdraw the application by giving notice to that effect to the Board⁹.

1 The Legal Services Act 2007 s 25 and Sch 4 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to meaning of 'reserved legal activities' see PARA 512. The Lord Chancellor may, by order, make provision enabling applications to be made, considered and determined under the Legal Services Act 2007 Sch 4 Pt 2 or Sch 10 Pt 1 (see PARAS 1479-1484) in relation to a provisional reserved activity, as if the activity were a reserved legal activity and enabling provisional designation orders to be made by the Lord Chancellor in respect of a provisional reserved activity, as if the activity were a reserved legal activity: s 25(1). Such an order may, in particular, provide that Sch 4 Pt 2 or Sch 10 Pt 1 is to apply, in relation to such cases as may be specified by the order, with such modifications as may be so specified: s 25(2). The Lord Chancellor may also, by order, make provision:

- 85 (1) for the purpose of enabling applications for authorisation to carry on an activity which is a provisional reserved activity to be made to and considered and determined by a body in respect of which a provisional designation order is made or the Board in its capacity as a licensing authority (s 25(3)(a));
- 86 (2) for the purpose of enabling persons to be deemed to be authorised to carry on an activity which is a new reserved legal activity by a relevant approved regulator in relation to the activity,

or by the Board in its capacity as a licensing authority, for a period specified in the order (s 25(3)(b)).

For this purpose 'provisional reserved activity' means an activity in respect of which a provisional report under Sch 6 para 10 (see PARA 531) states that the Board is minded to make a recommendation for the purposes of s 24 (see PARAS 512, 525), 'provisional designation order' means an order made by the Lord Chancellor under Sch 4 Pt 2 or Sch 10 Pt 1 which is conditional upon the Lord Chancellor making an order under s 24 in respect of the provisional reserved activity, pursuant to a recommendation made by the Board following the provisional report and 'new reserved legal activity' means a legal activity which has become a reserved legal activity by virtue of an order under s 24: s 25(4). At the date at which this volume states the law no such orders had been made. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. Such an application must be made in such form and manner as the Board may specify in rules and must be accompanied by a statement of the reserved legal activity or activities to which it relates, details of the applicant's proposed regulatory arrangements, such explanatory material (including material about the applicant's constitution and activities) as the applicant considers is likely to be needed for the purposes of Sch 4 Pt 2 and the prescribed fee: Sch 4 para 3(3). The prescribed fee is the fee specified in, or determined in accordance with, rules made by the Board with the consent of the Lord Chancellor: Sch 4 para 3(4). Such rules are non statutory and are not set out in this work. Any prescribed fee so received is payable into the Consolidated Fund: see s 175(1)(a), (2)(a). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

4 Legal Services Act 2007 Sch 4 para 3(1), (2)(a). At the date at which this volume states the law no such orders had been made. As to the meaning of 'approved regulator' see PARA 358.

5 Legal Services Act 2007 Sch 4 para 3(1), (2)(b).

6 Legal Services Act 2007 Sch 4 para 3(5)(a).

7 Legal Services Act 2007 Sch 4 para 3(5)(b). Such regulations are non statutory and not set out in this work.

8 Legal Services Act 2007 Sch 4 para 3(5)(c).

9 Legal Services Act 2007 Sch 4 para 3(6). As to notices generally see PARA 303 note 11.

UPDATE

360 Application

TEXT AND NOTES--Legal Services Act 2007 Sch 4 para 3(1), (3), (4) in force 1 January 2009: SI 2008/3149. Legal Services Act 2007 Sch 4 para 3(2), (5), (6) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/C. DESIGNATION OF BODIES BY ORDER/361. Dismissal of application.

361. Dismissal of application.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may refuse to consider, or to continue its consideration of, an application³ and must give the applicant notice of that decision and of its reasons for it⁴.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 4 para 4(1). The Board must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider, or to continue its consideration of, an application under Sch 4 para 4(1). Such rules are non-statutory and not set out in this work.

4 Legal Services Act 2007 Sch 4 para 4(3). The Board must publish a notice given under Sch 4 para 4(3). As to notices generally see PARA 303 note 11.

UPDATE

361 Dismissal of application

TEXT AND NOTES--Legal Services Act 2007 Sch 4 para 4(1), (3) in force 1 January 2010: SI 2009/3250. Legal Services Act 2007 Sch 4 para 4(2) in force 1 January 2009: SI 2008/3149.

NOTES 3, 4--See Legal Services Act 2007 Sch 4 para 4(2), (4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/C. DESIGNATION OF BODIES BY ORDER/362. Advice.

362. Advice.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must give each of the persons listed below a copy of the application and accompanying material and a notice specifying a period within which any advice by the persons in heads (1), (2) and (4)³ must be given⁴. Those persons are:

- 107 (1) the Office of Fair Trading⁵;
- 108 (2) the Consumer Panel⁶;
- 109 (3) the Lord Chief Justice⁷; and
- 110 (4) such other persons as the Board considers it reasonable to consult regarding the application ('selected consultee')⁸.

The Board must give the applicant a copy of any advice duly given by the persons in heads (1) to (4) above⁹ and the applicant may make to the Board written representations and, if the Board authorises it to do so, oral representations, about the advice¹⁰. The Board must, as soon as practicable after the end of the period within which such representations may be made, publish any advice duly given¹¹ and any written representations¹² duly made¹³.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 The advice under the Legal Services Act 2007 Sch 4 para 6-8 (see notes 5-8).

4 Legal Services Act 2007 Sch 4 para 5(1). A person (the 'consultee') to whom a copy of the application is given under Sch 4 para 5(1) may, for the purposes of giving advice under Sch 4 paras 6-9 (see notes 5-8), request the applicant or any other person to provide the consultee with such additional information as may be specified by the consultee: Sch 4 para 10. As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 Sch 4 para 5(2)(a). The Office of Fair Trading must give the Board such advice as the Office of Fair Trading thinks fit regarding whether the application should be granted: Sch 4 para 6(1). In deciding what advice to give, the Office of Fair Trading must, in particular, have regard to whether making an order under Sch 4 para 17 (see PARA 366) in accordance with the recommendation applied for would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 4 para 6(2). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to the meaning of 'reserved legal services' see PARA 512 note 2.

6 Legal Services Act 2007 Sch 4 para 5(2)(b). The Consumer Panel must give the Board such advice as the Consumer Panel thinks fit regarding whether the application should be granted: Sch 4 para 7(1). In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order under Sch 4 para 17 (see PARA 366) in accordance with the recommendation applied for: Sch 4 para 7(2). As to the Consumer Panel see PARAS 323-326. As to the meaning of 'consumers' see PARA 302 note 8.

7 Legal Services Act 2007 Sch 4 para 5(2)(c). The Board must give the Lord Chief Justice a copy of any advice duly given under Sch 4 paras 6-8, and a notice specifying a period within which any advice under Sch 4 para 9 must be given: Sch 4 para 9(1). The Lord Chief Justice must then give such advice to the Board as the Lord Chief Justice thinks fit regarding whether the application should be granted: Sch 4 para 9(2). In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact on the courts in

England and Wales of the making of an order under Sch 4 para 17 (see PARA 366) in accordance with the recommendation applied for: Sch 4 para 9(3). As to the meaning of 'court' see PARA 302 note 13.

8 Legal Services Act 2007 Sch 4 para 5(2)(d), (3). A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the application: Sch 4 para 8.

9 Legal Services Act 2007 Sch 4 para 11(1).

10 Legal Services Act 2007 Sch 4 para 11(2). The Board must make rules governing the making of oral and written representations: Sch 4 para 11(3). Such rules are non statutory and are not set out in this work. Representations must be made within the period of 28 days beginning with the day on which the copy of the advice is given to the applicant or such longer period as the Board may specify in a particular case: Sch 4 para 11(4). Where oral representations are made, the Board must prepare a report of those representations: Sch 4 para 11(5). Before preparing that report, the Board must give the applicant a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made: Sch 4 para 11(6).

11 The advice given under the Legal Services Act 2007 Sch 4 paras 6-9.

12 The written representations given under the Legal Services Act 2007 Sch 4 para 11.

13 Legal Services Act 2007 Sch 4 para 12(1). The Board must also publish the report (if any) prepared under Sch 4 para 11: Sch 4 para 12(1). Nothing in Sch 4 para 12(1) operates to prevent a person who gives advice under Sch 4 paras 6-9 from publishing that advice or to prevent a person who makes representations under Sch 4 para 11 from publishing those representations: Sch 4 para 12(2). A person (the 'publisher') publishing any such material (whether under Sch 4 para 12(1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 4 para 12(3).

UPDATE

362 Advice

TEXT AND NOTES--Legal Services Act 2007 Sch 4 paras 11(1), (2), (4)-(6), 12 in force 1 January 2010: SI 2009/3250. Legal Services Act 2007 Sch 4 para 11(3) in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/C. DESIGNATION OF BODIES BY ORDER/363. Rules governing decisions by the Board.

363. Rules governing decisions by the Board.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must make rules specifying how it will determine applications³. Such rules must in particular provide that the Board may grant an application in relation to a particular reserved legal activity⁴ only if it is satisfied:

- 111 (1) that, if an order were to be made designating the body in relation to that activity⁵, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect⁶;
- 112 (2) that, if such an order were to be made, the applicant would be competent, and have sufficient resources, to perform the role of approved regulator in relation to the reserved legal activity at that time⁷;
- 113 (3) that the applicant's proposed regulatory arrangements make appropriate provision⁸;
- 114 (4) that the applicant's proposed regulatory arrangements comply with the requirements imposed⁹ in relation to the resolution of regulatory conflict¹⁰; and
- 115 (5) that those arrangements comply with the requirements imposed¹¹ in relation to the handling of complaints¹².

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 4 para 13(1). Such rules are non-statutory and are not set out in this work.

4 As to the meaning of 'reserved legal activity' see PARA 512.

5 ie under the Legal Services Act 2007 Sch 4 para 17 (see PARA 366).

6 Legal Services Act 2007 Sch 4 para 13(2)(a). The rules made for the purposes of Sch 4 para 13(2)(a) must in particular require the Board to be satisfied that the exercise of the applicant's regulatory functions would not be prejudiced by any of its representative functions and that decisions relating to the exercise of its regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of its representative functions: Sch 4 para 13(2). 'Representative functions' of an approved regulator are to any functions the approved regulator has in connection with the representation, or promotion, of the interests of persons regulated by it: s 27(1).

7 Legal Services Act 2007 Sch 4 para 13(2)(b). As to the meaning of 'approved regulator' see PARA 358.

8 Legal Services Act 2007 Sch 4 para 13(2)(c). As to the meaning of 'regulatory arrangements' see PARA 377.

9 ie the requirements imposed under the Legal Services Act 2007 ss 52, 54 (see PARAS 415, 417).

10 Legal Services Act 2007 Sch 4 para 13(2)(d).

11 ie the requirements imposed under the Legal Services Act 2007 ss 112, 145 (see PARAS 378, 385, 1500).

12 Legal Services Act 2007 Sch 4 para 13(2)(e).

UPDATE

363 Rules governing decisions by the Board

TEXT AND NOTE 1--Day appointed is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/C. DESIGNATION OF BODIES BY ORDER/364. Determination of applications.

364. Determination of applications.

As from a day to be appointed the following provisions have effect¹. After considering:

- 116 (1) the application and accompanying material²;
- 117 (2) any other information provided by the applicant³;
- 118 (3) any advice duly given⁴;
- 119 (4) any representations duly made⁵; and
- 120 (5) any other information which the Legal Services Board⁶ considers relevant to the application⁷,

the Board must decide whether to grant the application⁸.

Where the application relates to more than one reserved legal activity⁹ the Board may grant the application in relation to all or any of them¹⁰. The Board must give notice of its decision to the applicant (the 'decision notice')¹¹ and, where the Board decides to refuse the application (in whole or in part), the decision notice must specify the reasons for that decision¹². The Board must publish the decision notice¹³.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Legal Services Act 2007 Sch 4 para 14(1)(a).

3 Legal Services Act 2007 Sch 4 para 14(1)(b).

4 Legal Services Act 2007 Sch 4 para 14(1)(c). The advice duly given mentioned in the text refers to advice given under Sch 4 paras 6-9 (see PARA 362).

5 Legal Services Act 2007 Sch 4 para 14(1)(d). The representations duly made mentioned in the text are representations made under Sch 4 para 11 (see PARA 362).

6 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

7 Legal Services Act 2007 Sch 4 para 14(1)(e).

8 Legal Services Act 2007 Sch 4 para 14(1).

9 As to the meaning of 'reserved legal activity' see PARA 512.

10 Legal Services Act 2007 Sch 4 para 14(2).

11 Legal Services Act 2007 Sch 4 para 14(3). The Board must give the decision notice within 12 months beginning with the day on which the application is made to the Board (the 'decision period'): Sch 4 para 15(1), (2). The Board may, before the end of the decision period, issue a notice extending that period by a period specified in the notice and stating the Board's reasons for extending the decision period: Sch 4 para 15(3), (6). More than one such notice may be issued but the decision period must not exceed 16 months: Sch 4 para 15(4), (6), (7). The notice must be published by the Board: Sch 4 para 15(6), (7). The Board may issue a notice under Sch 4 para 15(3) only after it has consulted the Office of Fair Trading, the Consumer Panel and the Lord Chief Justice: Sch 4 para 15(5). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to notices generally see PARA 303 note 11.

12 Legal Services Act 2007 Sch 4 para 14(4).

13 Legal Services Act 2007 Sch 4 para 14(5).

UPDATE

364-368 Determination of applications ... The Legal Services Board as an approved regulator

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/C. DESIGNATION OF BODIES BY ORDER/365. Effect of grant of application.

365. Effect of grant of application.

As from a day to be appointed the following provisions have effect¹. Where an application is granted in relation to a reserved legal activity² or activities the Legal Services Board³ must recommend to the Lord Chancellor that an order be made designating the applicant as an approved regulator⁴ in relation to the reserved legal activity or activities in question⁵. The Board must make available to the Lord Chancellor any advice duly given⁶, any written representations duly made⁷, the report (if any)⁸ and any other material considered by the Board for the purpose of determining the application⁹.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activity' see PARA 512.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 As to the meaning of 'approved regulator' see PARA 358.

5 Legal Services Act 2007 Sch 4 para 16(1), (2). The Board must publish any recommendation so made: Sch 4 para 16(3).

6 The advice given under the Legal Services Act 2007 Sch 4 paras 6-9 (see PARA 362).

7 The written representations made under the Legal Services Act 2007 Sch 4 para 11 (see PARA 362).

8 The report prepared under the Legal Services Act 2007 Sch 4 para 11 (see PARA 362).

9 Legal Services Act 2007 Sch 4 para 16(4).

UPDATE

364-368 Determination of applications ... The Legal Services Board as an approved regulator

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/C. DESIGNATION OF BODIES BY ORDER/366. Lord Chancellor's decision to make an order.

366. Lord Chancellor's decision to make an order.

As from a day to be appointed the following provisions have effect¹. Where a recommendation is made to the Lord Chancellor², the Lord Chancellor may make an order in accordance with the recommendation or refuse to make such an order³.

Where the recommendation relates to more than one reserved legal activity⁴, the Lord Chancellor may make an order in accordance with the recommendation⁵ in relation to all or any of them⁶.

The Lord Chancellor must decide whether to make an order and give notice of his decision (the 'decision notice') to the applicant⁷. If he decides not to make an order in accordance with the whole or part of the recommendation, the decision notice must state the reasons for the decision⁸.

Where an order is made by the Lord Chancellor the applicant's proposed regulatory arrangements⁹ are at the same time treated as having been approved by the Legal Services Board¹⁰.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 He under the Legal Services Act 2007 Sch 4 para 16 (see PARA 365).

3 Legal Services Act 2007 Sch 4 para 17(1). At the date at which this volume states the law no such orders had been made.

4 As to the meaning of 'reserved legal activity' see PARA 512.

5 He under the Legal Services Act 2007 Sch 4 para 17(1)(a).

6 Legal Services Act 2007 Sch 4 para 17(2).

7 Legal Services Act 2007 Sch 4 para 17(3). The decision notice must be given to the applicant within the period of 90 days beginning with the day on which the recommendation was made: Legal Services Act 2007 Sch 4 para 17(3). The Lord Chancellor must publish the decision notice: Sch 4 para 17(5). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 Sch 4 para 17(4).

9 But where the order relates to one or more (but not all) of the reserved legal activities to which the application related, the Legal Services Act 2007 Sch 1 para 18(1) has effect as if the reference to the applicant's proposed regulatory arrangements were a reference to those arrangements excluding any provision made in respect of any activities excluded from the order: Sch 4 para 18(2). As to the meaning of 'regulatory arrangements' see PARA 377.

10 Legal Services Act 2007 Sch 4 para 18(1). Schedule 4 para 18(1) is without prejudice to the Board's power to give directions under s 32 (see PARA 388): Sch 4 para 18(3). As to the Legal Services Board see s 2; and PARAS 303-326.

UPDATE

364-368 Determination of applications ... The Legal Services Board as an approved regulator

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/D. LEGAL SERVICES BOARD AS AN APPROVED REGULATOR/367. Orders in relation to the Board as an approved regulator.

D. LEGAL SERVICES BOARD AS AN APPROVED REGULATOR

367. Orders in relation to the Board as an approved regulator.

As from a day to be appointed the following provisions have effect¹. The Lord Chancellor may by order²:

- 121 (1) designate the Legal Services Board³ as an approved regulator⁴ in relation to one or more reserved legal activities⁵;
- 122 (2) modify the functions of the Board, and make such other provision relating to those functions as the Lord Chancellor considers necessary or expedient, with a view to enabling the Board to discharge its functions as an approved regulator effectively and efficiently⁶;
- 123 (3) cancel the Board's designation as an approved regulator in relation to one or more reserved legal activities⁷.

The Board may recommend to the Lord Chancellor that the Lord Chancellor make an order in the form of a draft order prepared by the Board and annexed to the recommendation⁸ and the Lord Chancellor may make an order only if the Board has made such a recommendation and the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation⁹.

If the Lord Chancellor decides not to make an order pursuant to a recommendation by the Board¹⁰ the Lord Chancellor must give the Board a notice stating the reasons for that decision and publish the notice¹¹.

1 The Legal Services Act 2007 ss 62, 65, 66 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 An order under the Legal Services Act 2007 s 62 may make such modifications of provision made by or under any enactment (including the Legal Services Act 2007 or any Act passed after it) as the Lord Chancellor considers necessary or expedient: s 62(5). At the date at which this volume states the law no such orders had been made.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 As to the meaning of 'approved regulator' see PARA 358. As to when the Board may be designated as an approved regulator in relation to a reserved legal activity see PARA 368.

5 Legal Services Act 2007 s 62(1)(a). As to the meaning of 'reserved legal activities' see PARA 512.

6 Legal Services Act 2007 s 62(1)(b). See further PARA 369.

7 Legal Services Act 2007 s 62(1)(c). Where such an order is made s 46 (other than s 46(4)(b)) (see PARA 409) and s 47 (see PARA 410) apply in relation to the Board and relevant authorised persons as they apply to an approved regulator whose designation is cancelled under s 45 and persons authorised by that approved regulator to carry on activities which are reserved legal activities: s 65(1), (2). As to the meaning of 'relevant authorised persons' see s 64; PARA 369 note 6 (definition applied by s 65(3)).

8 Legal Services Act 2007 s 66(1). Before making a recommendation under s 66, the Board must give each of the persons listed below a notice containing a copy of the proposed recommendation, a copy of the proposed draft order and a statement specifying a period within which representations may be made about the proposals: s 66(2). Those persons are:

- 87 (1) the Lord Chancellor (s 66(3)(a));
- 88 (2) the Office of Fair Trading (s 66(3)(b));
- 89 (3) the Consumer Panel (s 66(3)(c));
- 90 (4) the Lord Chief Justice (s 66(3)(d)); and
- 91 (5) such other persons as the Board considers it reasonable to consult regarding the proposals (s 66(3)(e)).

Before making the recommendation, the Board must have regard to any representations duly made (whether by persons within heads (1)-(5) above or otherwise): s 66(5).

The board must publish a notice given under s 66(2): s 66(4). If the draft order to be annexed to the recommendation differs from the draft contained in the notice under s 66(2) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes: s 66(6). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

9 Legal Services Act 2007 s 62(2).

10 ie pursuant to a recommendation under the Legal Services Act 2007 s 66.

11 Legal Services Act 2007 s 62(3). As to notices generally see PARA 303 note 11.

UPDATE

364-368 Determination of applications ... The Legal Services Board as an approved regulator

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/D. LEGAL SERVICES BOARD AS AN APPROVED REGULATOR/368. The Legal Services Board as an approved regulator.

368. The Legal Services Board as an approved regulator.

As from a day to be appointed the following provisions have effect¹. Where an order has been made designating the Legal Services Board as an approved regulator² the order may designate the Board as an approved regulator in relation to a reserved legal activity³ only where:

- 124 (1) a body's designation as an approved regulator in relation to the activity is cancelled⁴; or
- 125 (2) the activity becomes a reserved legal activity by virtue of an order⁵.

However this does not prevent the order having effect in advance of an event within heads (1) and (2) above for the purpose of enabling the Board to authorise persons to carry on activities which constitute the reserved legal activity in question with effect from the occurrence of the event⁶.

The order must ensure that the Board, acting as an approved regulator, may make regulatory arrangements or modify its regulatory arrangements only with the approval of the Board (acting otherwise than in its capacity as an approved regulator or as a licensing authority)⁷.

1 The Legal Services Act 2007 s 63 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie an order under the Legal Services Act 2007 ss 62(1)(a) (see PARA 367). As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to the meaning of 'approved regulator' see PARA 358.

3 As to the meaning of 'reserved legal activity' see PARA 512.

4 Ie cancelled under the Legal Services Act 2007 s 45 (see PARA 405).

5 Legal Services Act 2007 s 63(1), (2). An order referred to in the text is an order under s 24 (see PARAS 512, 525).

6 Legal Services Act 2007 s 63(3).

7 Legal Services Act 2007 s 63(4). As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the Board acting in its capacity as an approved regulator see PARA 368. As to the meaning of 'regulatory arrangements' see PARA 377.

UPDATE

364-368 Determination of applications ... The Legal Services Board as an approved regulator

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/D. LEGAL SERVICES BOARD AS AN APPROVED REGULATOR/369. Modification of the Board's functions.

369. Modification of the Board's functions.

As from a day to be appointed the following provisions have effect¹. Where an order is made modifying the functions of the Legal Services Board² the order may include (among other things) provision conferring on the Board powers to do any of the following:

- 126 (1) to authorise (otherwise than by the grant of a licence under the Legal Services Act 2007 Part 5³) persons or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the Board is designated as an approved regulator⁴;
- 127 (2) to make qualification regulations⁵;
- 128 (3) to make provision as to the educational, training and other requirements to be met by regulated persons who are not relevant authorised persons⁶;
- 129 (4) to make practice rules and conduct rules⁷;
- 130 (5) to make disciplinary arrangements in relation to regulated persons (including discipline rules)⁸;
- 131 (6) to make rules requiring the payment of fees specified in or determined in accordance with the rules⁹;
- 132 (7) to make indemnification arrangements¹⁰;
- 133 (8) to make compensation arrangements¹¹;
- 134 (9) to make rules as to the treatment of money (including money held in trust) which is received, held or dealt with for clients, or other persons, by regulated persons, and as to the keeping by such persons of accounts in respect of such money¹²;
- 135 (10) to take steps for the purpose of ascertaining whether or not the provisions of rules or regulations made, or any code or guidance issued, by the Board in its capacity as an approved regulator are being complied with, and to make rules requiring relevant authorised persons to produce documents and provide information for that purpose¹³;
- 136 (11) to delegate any of the functions exercisable by the Board in its capacity as an approved regulator to such persons as it considers appropriate¹⁴;
- 137 (12) to make regulations or rules providing for appeals to the High Court or another body against decisions made by the Board in its capacity as an approved regulator (including regulations or rules providing for a decision on such an appeal to be final and for orders as to payment of costs)¹⁵.

The order may provide for any provision relating to licensing authorities' powers of intervention¹⁶:

- 138 (a) to apply in relation to the Board (in its capacity as an approved regulator) and regulated persons as it applies in relation to a licensing authority and licensed bodies (or managers or employees of such bodies) or to so apply with such modifications as are prescribed by the order¹⁷; or

139 (b) to make provision, in relation to the Board (in that capacity) and regulated persons, corresponding to any of the provisions made¹⁸, in relation to licensing authorities and licensed bodies (or managers or employees of such bodies)¹⁹.

1 The Legal Services Act 2007 s 64 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie an order under the Legal Services Act 2007 s 62(1)(b) (see PARA 367): s 64(1). As to the Legal Services Board see s 2; and PARAS 303-326.

3 Ie the Legal Services Act 2007 ss 71-111 (see PARA 1476 et seq).

4 Legal Services Act 2007 s 64(2)(a). As to the meaning of 'reserved legal activities' see PARA 512. As to the meaning of 'approved regulator' see PARA 358.

5 Legal Services Act 2007 s 64(2)(b). As to the meaning of 'qualification regulations' see PARA 377 note 7.

6 Legal Services Act 2007 s 64(2)(c). For these purposes 'relevant authorised person' means a person authorised by the Board (other than by the grant of a licence under Pt 5 (ss 71-111) (see PARA 1476 et seq)) to carry on one or more activities which are reserved legal activities: s 64(5). 'Regulated person', in relation to a body, means any class of persons which consists of or includes:

92 (1) persons who are authorised by the body to carry on an activity which is a reserved legal activity (s 21(3)(a) (definition applied by s 64(5));

93 (2) persons who are not so authorised, but are employees of a person who is so authorised (s 21(3)(b) (definition applied by s 64(5)).

In relation to an authorised person other than an individual, references in s 21(2), (3) to employees of the person include managers of the person: s 21(4).

7 Legal Services Act 2007 s 64(2)(d). As to the meaning of 'conduct rules', in relation to a body, see PARA 377 note 5. 'Practice rules', in relation to a body, means any rules or regulations (however they may be described) which govern the practice of regulated persons: s 21(2).

8 Legal Services Act 2007 s 64(2)(e). 'Discipline rules', in relation to a body, means any rules or regulations (however they may be described) as to the disciplining of regulated persons: s 21(2).

9 Legal Services Act 2007 s 64(2)(f). Any sum so received is payable into the Consolidated Fund: see s 175(1)(d). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

10 Legal Services Act 2007 s 64(2)(g). 'Indemnification arrangements', in relation to a body, means arrangements for the purpose of ensuring the indemnification of those who are or were regulated persons against losses arising from claims in relation to any description of civil liability incurred by them, or by employees or former employees of theirs, in connection with their activities as such regulated persons: s 21(2). As to the purposes of giving effect to indemnification arrangements and compensation arrangements, the order may authorise the Board to make rules:

94 (1) authorising or requiring the Board to establish and maintain a fund or funds (s 64(4)(a));

95 (2) authorising or requiring the Board to take out and maintain insurance with authorised insurers (s 64(4)(b));

96 (3) requiring relevant authorised persons or relevant authorised persons of any specific description to take out and maintain insurance with authorised insurers (s 64(4)(c)).

For the purposes of s 64 'authorised insurer' means a person within any of the following:

97 (a) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (ss 40-55) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 348-361) to effect or carry out contracts of insurance of a relevant class (Legal Services Act 2007 s 64(5));

98 (b) an EEA firm (within the meaning of the Financial Services and Markets Act 2000) of the kind mentioned in Sch 3 para 5(d) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315), which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under

Sch 3 para 12) to effect or carry out contracts of a relevant class (Legal Services Act 2007 s 64(5));

- 99 (c) a person who does not fall within head (a) or head (b) above and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom (s 64(5)).

A contract of insurance is of a relevant class if it insures against a risk arising from accident, credit, legal expenses, general liability to third parties, sickness, suretyship or miscellaneous financial loss: s 64(6)(a). The above definition of 'authorised insurer' must be read with the Financial Services and Markets Act 2000 s 22 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84), and any relevant order under s 22, and with Sch 2: Legal Services Act 2007 s 64(6)(b).

11 Legal Services Act 2007 s 64(2)(h). See note 10. 'Compensation arrangements' in relation to a body, means arrangements to provide for grants or other payments for the purposes of relieving or mitigating losses or hardship suffered by persons in consequence of:

- 100 (1) negligence or fraud or other dishonesty on the part of any persons whom the body has authorised to carry on activities which constitute a reserved legal activity, or of employees of theirs, in connection with their activities as such authorised persons (s 21(2)); and
- 101 (2) failure, on the part of regulated persons, to account for money received by them in connection with their activities as such regulated persons (s 21(2)).

12 Legal Services Act 2007 s 64(2)(i).

13 Legal Services Act 2007 s 64(2)(j).

14 Legal Services Act 2007 s 64(2)(k).

15 Legal Services Act 2007 s 64(2)(l). At the date at which this volume states the law no such orders had been made.

16 In any provision of the Legal Services Act 2007 Sch 14 (see PARAS 1552-1558). As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

17 Legal Services Act 2007 s 64(3)(a). 'Manager' in relation to a body, means a person who:

- 102 (1) if the body is a body corporate whose affairs are managed by its members, is a member of the body;
- 103 (2) if the body is a body corporate and head (1) above does not apply, is a director of the body;
- 104 (3) if the body is a partnership, is a partner; and
- 105 (4) if the body is an unincorporated body (other than a partnership), is a member of its governing body (s 207).

However, the Lord Chancellor may by order make provision modifying the definition of 'manager' in its application to a body of persons formed under, or in so far as the body is recognised by, law having effect outside England and Wales: s 207(5).

18 In by the Legal Services Act 2007 Sch 14 (see PARAS 1552-1558).

19 Legal Services Act 2007 s 64(3)(b).

UPDATE

369 Modification of the Board's functions

TEXT AND NOTES 1-15--These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/D. LEGAL SERVICES BOARD AS AN APPROVED REGULATOR/370. Separation of functions.

370. Separation of functions.

As from a day to be appointed the following provisions have effect¹. In discharging its functions as an approved regulator the Legal Services Board² must take such steps as are necessary to ensure an appropriate financial and organisational separation between the activities of the Board that relate to the carrying out of those functions and the other activities of the Board³.

1 The Legal Services Act 2007 s 62 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to the meaning of 'approved regulator' see PARA 358.

3 Legal Services Act 2007 s 62(4).

UPDATE

370-372 Separation of functions ... Duty to promote the regulatory objectives

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/D. LEGAL SERVICES BOARD AS AN APPROVED REGULATOR/371. Regulatory conflict.

371. Regulatory conflict.

As from a day to be appointed the following provisions have effect¹. An approved regulator² may make a request to the Legal Services Board³ (in its capacity as an approved regulator) that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the conflicting regulator⁴. Such a request may be made if the approved regulator considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between a requirement of those regulatory arrangements and a requirement of the regulatory arrangements of the approved regulator⁵.

1 The Legal Services Act 2007 s 68 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358. An affected person in relation to an approved regulator may request the approved regulator to exercise its powers under s 68(1): s 68(2). 'Affected person' in relation to the Board or any other approved regulator, means any person authorised by the body to carry on a reserved legal activity or an employee or manager of such a person: s 68(11). As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'manager' see PARA 369 note 17.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 See the Legal Services Board s 68(4). As to the meaning of 'regulatory arrangements' see PARA 377. For the purposes of s 68 'conflicting regulator' means in a case within s 68(1), the approved regulator making the request and in a case within s 68(3) or s 68(5), the approved regulator whose regulatory arrangements are considered to conflict with those of the Board: s 68(11). An affected person in relation to the Board may make a request under s 68(4) if the person considers that the regulatory arrangements of the Board (in its capacity as an approved regulator) do not make appropriate provision to prevent a conflict between a requirement of those regulatory arrangements and a requirement of the regulatory arrangements of an approved regulator: s 68(3). Section 68 also applies in relation to the Legal Services Board in its capacity as a licensing authority and its licensing rules: see s 103(2); and PARA 1478. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

5 Legal Services Act 2007 s 68(1). An affected person in relation to the Board may make an application to the Board for it to exercise its powers under s 32 (see PARA 388) to direct the approved regulator:

- 106 (1) to take steps to modify, in such manner as may be specified in the direction, the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board (in its capacity as an approved regulator) (s 68(6)(a)); or
- 107 (2) if its regulatory arrangements do not make any such provision, to make such provision as may be specified in the direction to prevent such a conflict (s 68(6)(b)).

Such an application may be made if the person considers that the regulatory arrangements of an approved regulator do not make appropriate provision to prevent a conflict between a requirement of those regulatory arrangements and a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator): s 68(5).

Section 53(5)-(8) (see PARA 416) applies in relation to an application under s 68(6) as it applies in relation to an application under s 53, except that references to the applicant regulator are to be read as references to the person who made the application and references to the conflicting regulator are to be construed in accordance with s 68: s 68(10). An affected person in relation to an approved regulator (other than the Board) may make a request to the approved regulator that it reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with the Board: s 68(8).

Such a request may be made if the person considers that the regulatory arrangements of the approved regulator do not make appropriate provision to prevent a conflict between a requirement of those regulatory arrangements and a requirement of the regulatory arrangements of the Board (in its capacity as an approved regulator): s 68(7).

The Board (in its capacity as an approved regulator) and any other approved regulator must consider any request made to it under s 68: s 68(9).

UPDATE

370-372 Separation of functions ... Duty to promote the regulatory objectives

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(ii) Duties and Functions of Approved Regulators/372. Duty to promote the regulatory objectives.

(ii) Duties and Functions of Approved Regulators

372. Duty to promote the regulatory objectives.

As from a day to be appointed the following provisions have effect¹. In discharging its regulatory functions² (whether in connection with a reserved legal activity³ or otherwise) an approved regulator must comply with the following requirements⁴. The approved regulator must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives⁵ and which the approved regulator considers most appropriate for the purpose of meeting those objectives⁶. The approved regulator must have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed and any other principle appearing to it to represent the best regulatory practice⁷.

1 The Legal Services Act 2007 s 28 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'regulatory functions' see PARA 301 note 4.

3 As to the meaning of 'reserved legal activity' see PARA 512.

4 Legal Services Act 2007 s 28(1). As to the meaning of 'approved regulator' see PARA 358.

5 As to the meaning of 'regulatory objectives' see PARA 302.

6 Legal Services Act 2007 s 28(2).

7 Legal Services Act 2007 s 28(3).

UPDATE

370-372 Separation of functions ... Duty to promote the regulatory objectives

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(ii) Duties and Functions of Approved Regulators/373. Prohibition on interfering with representative functions.

373. Prohibition on interfering with representative functions.

As from a day to be appointed the following provisions have effect¹. Nothing in the Legal Services Act 2007 authorises the Legal Services Board to exercise its functions² in relation to any representative function of an approved regulator³.

However this does not prevent the Board exercising its functions for the purpose of ensuring:

- 140 (1) that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions⁴; or
- 141 (2) that decisions relating to the exercise of an approved regulator's regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions⁵.

¹ The Legal Services Act 2007 s 29 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to the functions of the Legal Services Board see PARAS 311-318.

³ Legal Services Act 2007 s 29(1). As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'representative functions' see PARA 363 note 6.

⁴ Legal Services Act 2007 s 29(2)(a). As to the meaning of 'regulatory functions' see PARA 301 note 4.

⁵ Legal Services Act 2007 s 29(2)(b).

UPDATE

373-374 Prohibition on interfering with representative functions, Rules relating to the exercise of regulatory functions

These provisions have effect as from 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(ii) Duties and Functions of Approved Regulators/374. Rules relating to the exercise of regulatory functions.

374. Rules relating to the exercise of regulatory functions.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must make rules ('internal governance rules') setting out requirements to be met by approved regulators³ for the purpose of ensuring:

- 142 (1) that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions⁴; and
- 143 (2) that decisions relating to the exercise of an approved regulator's regulatory functions are so far as reasonably practicable taken independently from decisions relating to the exercise of its representative functions⁵.

The internal governance rules must require each approved regulator to have in place arrangements which ensure:

- 144 (a) that the persons involved in the exercise of its regulatory functions are, in that capacity, able to make representations to, be consulted by and enter into communications with the Board, the Consumer Panel⁶, the Office for Legal Complaints⁷ and other approved regulators⁸; and
- 145 (b) that the exercise by those persons of those powers is not prejudiced by the approved regulator's representative functions and is, so far as reasonably practicable, independent from the exercise of those functions⁹.

The internal governance rules must also require each approved regulator:

- 146 (i) to take such steps as are reasonably practicable to ensure that it provides such resources as are reasonably required for or in connection with the exercise of its regulatory functions¹⁰;
- 147 (ii) to make such provision as is necessary to enable persons involved in the exercise of its regulatory functions to be able to notify the Board where they consider that their independence or effectiveness is being prejudiced¹¹.

¹ The Legal Services Act 2007 s 30 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

³ As to the meaning of 'approved regulator' see PARA 358. The first set of rules under the Legal Services Act 2007 s 30 must be made before the day appointed by the Lord Chancellor by order for the purposes of s 30: s 30(4). Such rules are non-statutory and are not set out in this work.

⁴ Legal Services Act 2007 s 30(1)(a). As to the meaning of 'representative functions' see PARA 363 note 6. As to the meaning of 'regulatory functions' see PARA 301 note 4.

⁵ Legal Services Act 2007 s 30(1)(b).

- 6 As to the Consumer Panel see PARAS 323-326.
- 7 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442 et seq.
- 8 Legal Services Act 2007 s 30(2)(a).
- 9 Legal Services Act 2007 s 30(2)(b).
- 10 Legal Services Act 2007 s 30(3)(a).
- 11 Legal Services Act 2007 s 30(3)(b).

UPDATE

373-374 Prohibition on interfering with representative functions, Rules relating to the exercise of regulatory functions

These provisions have effect as from 1 January 2009: SI 2008/3149.

374 Rules relating to the exercise of regulatory functions

NOTE 3--Day appointed is 31 December 2008: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(ii) Duties and Functions of Approved Regulators/375. Modification of the functions of approved regulators.

375. Modification of the functions of approved regulators.

The Lord Chancellor may by order modify, or make other provision relating to, the functions of an approved regulator¹ or any other body (other than the Legal Services Board)².

The Lord Chancellor may make such an order only if the Board has made an appropriate recommendation³, a draft order was annexed to the recommendation and the order is in the same form as, or a form not materially different from, that draft order⁴. The recommendation may be made only with the consent of the approved regulator or other body to which the recommendation relates⁵.

1 As to the meaning of 'approved regulator' see PARA 358.

2 Legal Services Act 2007 s 69(1). As to the Legal Services Board see s 2; and PARAS 303-326. At the date at which this volume states the law no such orders had been made. An order under s 69 also may make provision in relation to:

108 (1) the provision of immigration advice or immigration services (s 69(5)(a)); and

109 (2) persons authorised to provide such advice and services by the body to which the order relates (s 69(5)(b)),

corresponding to the provision which may be made by virtue of s 64(2)-(4) (see PARA 369) in relation to reserved legal activities and persons authorised to carry on those activities (s 69(5)).

An order under s 69 may modify provisions made by or under any enactment (including the Legal Services Act 2007 or any Act passed after it), prerogative instrument or other instrument or document: s 69(6).

Any provision made by an order under s 69 may be expressed to be conditional upon:

110 (a) the body to which the order relates being designated by an order under Sch 4 paras 3-18 (see PARAS 360-366) as an approved regulator, or by an order under Sch 10 Pt 1 (see PARAS 1479-1484) as a licensing authority, in relation to one or more reserved legal activities specified in the proposed draft order (s 69(7)(a)); or

111 (b) the body to which the order relates becoming a designated qualifying regulator under the Immigration and Asylum Act 1999 s 86A (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**) (Legal Services Act 2007 s 69(7)(b)).

The powers to make an order conferred by s 69 are without prejudice to any powers (statutory or non-statutory) which an approved regulator or other body may have apart from s 69: s 69(8). The provisions of s 64(2)(a), (3), (4) (see PARA 369) apply in relation to an order under s 69 as they apply in relation to an order under s 62(1)(b) (see PARA 301) in relation to the Board: s 69(4). As to the meaning of 'reserved legal activities' see PARA 512. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

Sections 69, 70 have effect subject to modifications which allow for their application to designated regulators until Sch 4 para 1 (see PARA 359) comes into force: see the Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, arts 2(c), 3, 4, 5.

3 The Board may make a recommendation under the Legal Services Act 2007 s 69 only with a view to an order being made which enables the body to which it relates to do one or more of the following:

112 (1) to become designated by an order under Sch 4 paras 3-18 (see PARAS 360-366) as an approved regulator, or designated by an order under Sch 10 Pt 1 (see PARAS 1479-1484) as a licensing authority, in relation to one or more reserved legal activities (s 69(3)(a));

- 113 (2) to authorise persons or any category of persons (whether corporate or unincorporate) to carry on one or more activities which are reserved legal activities in relation to which the body is (at the time the authorisation has effect) designated as an approved regulator, or to make regulatory arrangements (s 69(3)(b));
- 114 (3) to carry out its role as an approved regulator (including its role, if any, as a licensing authority) more effectively or efficiently (s 69(3)(c));
- 115 (4) to become a qualifying regulator under Sch 18 Pt 1 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**) (s 69(3)(d));
- 116 (5) if it is a designated qualifying regulator under the Immigration and Asylum Act 1999 s 86A (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**), to authorise persons to provide any additional advice or services the provision of which amounts to the provision of immigration advice or immigration services (Legal Services Act 2007 s 69(3)(e)).

As to modification of this provision see note 1.

4 Legal Services Act 2007 s 69(2). Before making a recommendation under s 69, the Board must publish a draft of the proposed recommendation and the proposed draft order: s 70(2). The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period: s 70(3). Before making the recommendation, the Board must have regard to any representations duly made: s 70(4). If the draft order to be annexed to the recommendation differs from the draft published in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes: s 70(5). As to notices generally see PARA 303 note 11.

As to modification see note 1.

5 Legal Services Act 2007 s 70(1). As to modification of this provision see note 1.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(ii) Duties and Functions of Approved Regulators/376. Information.

376. Information.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may, by notice, require an approved regulator³ to provide any information, or information of a description, specified in the notice or to produce documents, or documents of a description, specified in the notice⁴.

A notice:

- 148 (1) may specify the manner and form in which any information is to be provided⁵;
- 149 (2) must specify the period within which any information is to be provided or document is to be produced⁶;
- 150 (3) may require any information to be provided, or document to be produced, to the Board or to a person specified in the notice⁷.

1 The Legal Services Act 2007 ss 55, 56 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358. For the purposes of the Legal Services Act 2007 ss 55, 56, references to an approved regulator include a body which was, but is no longer, an approved regulator: s 55(6).

4 Legal Services Act 2007 s 55(1). The Board may, by notice, require a person representing the approved regulator to attend at a time and place specified in the notice to provide an explanation of any information provided or document produced under s 55: s 55(3). The Board may pay to any person such reasonable costs as may be incurred by that person in connection with the provision of any information, or the production of any document, by that person pursuant to a notice under s 55(1) or that person's compliance with a requirement imposed under s 55(3): s 55(4). Where an approved regulator is unable to comply with a notice given to it under s 55(1), it must give the Board a notice to that effect stating the reasons why it cannot comply: s 56(1). If an approved regulator refuses, or otherwise fails, to comply with a notice under s 55(1), the Board may apply to the High Court for an order requiring the approved regulator to comply with the notice or with such directions for the like purpose as may be contained in the order: s 56(2). Section 55 applies in relation to a person to whom a notice is given under s 55(3) as it applies in relation to an approved regulator to whom a notice is given under s 55(1): s 56(3). The powers of the Board under s 55 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7. As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 s 55(2)(a).

6 Legal Services Act 2007 s 55(2)(b).

7 Legal Services Act 2007 s 55(2)(c). The Board, or a person specified under s 55(2)(c), may take copies of or extracts from a document produced pursuant to a notice under s 55(1): s 55(5).

UPDATE

376 Information

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/A. GENERALLY/377. Meaning of 'regulatory arrangements'.

(iii) Regulatory Arrangements

A. GENERALLY

377. Meaning of 'regulatory arrangements'.

As from a day to be appointed the following provisions have effect¹. For the purposes of the Legal Services Act 2007 references to the 'regulatory arrangements' of a body are to:

- 151 (1) its arrangements for authorising persons to carry on reserved legal activities²;
- 152 (2) its arrangements (if any) for authorising persons to provide immigration advice or immigration services³;
- 153 (3) its practice rules⁴;
- 154 (4) its conduct rules⁵;
- 155 (5) its disciplinary arrangements in relation to regulated persons (including its discipline rules)⁶;
- 156 (6) its qualification regulations⁷;
- 157 (7) its indemnification arrangements⁸;
- 158 (8) its compensation arrangements⁹;
- 159 (9) any of its other rules or regulations (however they may be described), and any other arrangements, which apply to or in relation to regulated persons, other than those made for the purposes of any function the body has to represent or promote the interests of persons regulated by it¹⁰; and
- 160 (10) its licensing rules (if any), so far as not within heads (1) to (9) above¹¹,

(whether or not those arrangements, rules or regulations are contained in, or made under, an enactment)¹².

1 The Legal Services Act 2007 s 21 is to be brought into force by order made by the Lord Chancellor under s 21(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Legal Services Act 2007 s 21(1)(a).

3 Legal Services Act 2007 s 21(1)(b).

4 Legal Services Act 2007 s 21(1)(c). As to the meaning of 'practice rules' see PARA 369 note 7.

5 Legal Services Act 2007 s 21(1)(d). 'Conduct rules', in relation to a body, means any rules or regulations (however they may be described) as to the conduct required of regulated persons: s 21(2).

6 Legal Services Act 2007 s 21(1)(e). As to the meaning of 'regulated person' see PARA 369 note 6 and as to the meaning of 'discipline rules' see PARA 369 note 8.

7 Legal Services Act 2007 s 21(1)(f). 'Qualification regulations', in relation to a body, means:

117 (1) any rules or regulations relating to the education and training which persons must receive or any other requirements which must be met by or in respect of them, in order for them to be authorised by the body to carry on an activity which is a reserved legal activity (s 21(2));

118 (2) any rules or regulations relating to the education and training which persons must receive or any other requirements which must be met by or in respect of them, in order for them to be authorised by the body to provide immigration advice or immigration services (s 21(2)); and

119 (3) any other rules or regulations relating to the education and training which regulated persons must receive or any other requirements which must be met by or in respect of them (s 21(2)),

(however they may be described): s 21(2).

8 Legal Services Act 2007 s 21(1)(g). As to the meaning of 'indemnification arrangements' see PARA 369 note 10.

9 Legal Services Act 2007 s 21(1)(h). As to the meaning of 'compensation arrangements' see PARA 369 note 11.

10 Legal Services Act 2007 s 21(1)(i).

11 Legal Services Act 2007 s 21(1)(j). As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

12 Legal Services Act 2007 s 21(1). For the purposes of Pt 6 (ss 112-161) regulations under the Compensation Act 2006 s 9 and Schedule (see **DAMAGES**) are to be treated as regulatory arrangements of the Claims Management Services Regulator: Legal Services Act 2007 s 161(1)(e). As to the meaning of 'Claims Management Services Regulator' see PARA 358 note 4. Regulatory arrangements must not provide for redress: see s 157(1); and PARA 386. Rules under the Solicitors Act 1974 s 36(1) (as prospectively substituted) (see PARA 862) which are not regulatory arrangements within the meaning of the Legal Services Act 2007 are to be treated as such arrangements: Solicitors Act 1974 s 36(7) (prospectively substituted by the Legal Services Act 2007 Sch 16 paras 1, 37).

UPDATE

377 Meaning of 'regulatory arrangements'

TEXT AND NOTES 1-10--Legal Services Act 2007 s 21(1)(a)-(i), (2) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/A. GENERALLY/378. Regulatory arrangement provisions to co-operate with investigations.

378. Regulatory arrangement provisions to co-operate with investigations.

As from a day to be appointed the following provisions have effect¹. The regulatory arrangements of an approved regulator² must make provision³:

- 161 (1) requiring each relevant authorised person⁴ to give ombudsmen⁵ all such assistance requested by them, in connection with the investigation, consideration or determination of complaints under the ombudsman scheme⁶ as that person is reasonably able to give⁷; and
- 162 (2) for the enforcement of that requirement⁸.

1 The Legal Services Act 2007 s 145 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'approved regulator' see PARA 358.

3 The provision made for the purposes of the Legal Services Act 2007 s 145(1) must satisfy such requirements as the Legal Services Board may, from time to time, specify for the purposes of s 145(1): s 145(2). The Legal Services Board must publish any such requirements: s 145(3). As to the Legal Services Board see s 2; and PARAS 303-326.

4 As to the meaning of 'relevant authorised person' in relation to an approved regulator, see the Legal Services Act 2007 s 112; and PARA 385 (definition applied by s 145(4)(a)).

5 As to the meaning of 'ombudsmen' see PARA 487 note 4.

6 As to the ombudsman scheme see PARA 465.

7 Legal Services Act 2007 s 145(1)(a).

8 Legal Services Act 2007 s 145(1)(b).

UPDATE

378 Regulatory arrangement provisions to co-operate with investigations

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 145(2), (3) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/379. Requirement for approval.

B. ALTERATION

379. Requirement for approval.

As from a day to be appointed the following provisions have effect¹. If an alteration² is made of the regulatory arrangements of an approved regulator³, the alteration does not have effect unless it is approved for the purposes of the Legal Services Act 2007⁴.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 For the purposes of the Legal Services Act 2007 Sch 4 paras 19-27 references to an 'alteration' of regulatory arrangements include an addition to, or the revocation of any part of, the arrangements: Sch 4 para 19(5).

3 As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 Sch 4 para 19(1). An alteration is approved for the purposes of the Legal Services Act 2007 if:

- 120 (1) it is approved by virtue of Sch 4 para 18 (see PARA 366) (approval of proposed regulatory arrangements on designation by order as approved regulator) (Sch 4 para 19(2)(a));
- 121 (2) it is approved by the Legal Services Board under Sch 4 paras 19-27 (Sch 4 para 19(2)(b));
- 122 (3) it is an exempt alteration (Sch 4 para 19(2)(c));
- 123 (4) it is an alteration made in compliance with a direction under s 32 (see PARA 388) (Sch 4 para 19(2)(d));
- 124 (5) it is approved by virtue of Sch 10 para 16 (approval of licensing rules on designation by order as licensing authority) (Sch 4 para 19(2)(e)); or
- 125 (6) it is approved by virtue of Sch 18 para 7 (approval of proposed regulatory arrangements when granting 'qualifying regulator' status for the purposes of the Immigration and Asylum Act 1999 Pt 5 (ss 82-93) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**) (Sch 4 para 19(1)(f)).

If a question arises whether approval is required by virtue of Sch 4 paras 19-27, it is for the Board to decide: Sch 4 para 19(6). Nothing in Sch 4 paras 19-27 applies in relation to any alteration of the regulatory arrangements of the Board in its capacity as an approved regulator (or of its licensing rules): Sch 4 para 19(7). An exempt alteration is an alteration which the Board has directed is to be treated as exempt for these purposes and may be specific or general and must be published by the Board: see Sch 4 para 19(3), (4). As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the Board acting in its capacity as an approved regulator see PARA 368. As to the Legal Services Board see s 2; and PARAS 303-326. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

UPDATE

379 Requirement for approval

TEXT AND NOTES--Day appointed for purposes of Legal Services Act 2007 Sch 4 para 19(1), (2)(a)-(e), (3)-(7) is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/380. Application.

380. Application.

As from a day to be appointed the following provisions have effect¹. An application by an approved regulator for the Legal Services Board² to approve an alteration or alterations of its regulatory arrangements³ must be made in such form and manner as the Board may specify in rules⁴.

The application must be accompanied by details of such of the approved regulator's regulatory arrangements as are relevant to the application, details of the alteration or alterations and such explanatory material as the approved regulator considers likely to be needed⁵.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to the meaning of 'approved regulator' see PARA 358.

3 As to the meaning of 'alteration' of regulatory arrangements see PARA 379 note 2. As to the meaning of 'regulatory arrangements' see PARA 377.

4 Legal Services Act 2007 Sch 4 para 20(1). Such rules are non-statutory and are not set out in this work.

5 Legal Services Act 2007 Sch 4 para 20(2).

UPDATE

380 Application

TEXT AND NOTE 1--Day appointed is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/381. Initial determination.

381. Initial determination.

As from a day to be appointed the following provisions have effect¹. Where the Legal Services Board² has received an application to approve an alteration³ it may grant the application and give the approved regulator⁴ a notice to that effect⁵ or give the approved regulator a notice stating that the Board is considering whether to refuse the application (a 'warning notice')⁶. The Board must publish any such notice given by it⁷. If the Board does not give the approved regulator the required notice⁸ within the initial decision period⁹, the application is deemed to have been granted by the Board¹⁰.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Ie an application under the Legal Services Act 2007 Sch 4 para 20 (see PARA 380).

4 As to the meaning of 'approved regulator' see PARA 358.

5 Legal Services Act 2007 Sch 4 para 21(1)(a). Where an application is granted under Sch 4 para 21(1)(a), Sch 4 para 21(3) or Sch 4 para 26(2) the alteration or alterations of the regulatory arrangements to which the application relates are approved: Sch 4 para 27(1). This is without prejudice to the Board's power to give directions under s 32 (power to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements) (see PARA 388): Sch 4 para 27(3). As to the meaning of 'regulatory arrangements' see PARA 377. As to notices generally see PARA 303 note 11.

6 Legal Services Act 2007 Sch 4 para 21(1)(b). The following applies where the Board gives an approved regulator a warning notice under Sch 4 para 21 in respect of the approved regulator's application: Sch 4 para 26(1). If the Board does not give the approved regulator notice of its decision under Sch 4 para 25 within the decision period, the application is deemed to have been granted by the Board at the end of that period: Sch 4 para 26(2). 'Decision period' means the period of 12 months beginning with the day on which the approved regulator received the warning notice: Sch 4 para 26(3). However the Board may, on one or more occasions, give the approved regulator a notice (an 'extension notice') extending the decision period: Sch 4 para 26(4). But an extension notice may only be given before the time when the decision period would end, but for the extension notice, and the total decision period must not exceed 18 months: Sch 4 para 26(5). The Board must publish any extension notice given by it: Sch 4 para 26(6).

7 Legal Services Act 2007 Sch 4 para 21(2).

8 Ie a notice under the Legal Services Act 2007 Sch 4 para 21(1).

9 'Initial decision period' means the period of 28 days beginning with the day on which the application was received by the Board: Legal Services Act 2007 Sch 4 para 21(4). The Board may extend the initial decision period with the consent of the approved regulator or by giving an extension notice to the approved regulator, before the end of that period (or if it has previously been extended under Sch 4 para 21(5), that period as so extended): Sch 4 para 21(5). An extension notice must specify the period of the extension and must state the Board's reasons for extending the initial decision period and that period must end no later than the end of the period of 90 days beginning with the date on which the application was made under Sch 4 para 20 (see PARA 380): Sch 4 para 21(6).

10 Legal Services Act 2007 Sch 4 para 21(3). See note 5.

UPDATE

381 Initial determination

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/382. Advice.

382. Advice.

As from a day to be appointed the following provisions have effect¹. Where the Legal Services Board² has given the approved regulator a warning notice³, the Board may invite such persons as it considers appropriate to give the Board advice regarding whether the application should be granted⁴. A person (the 'consultee') to whom an invitation is given may, for the purposes of giving such advice to the Board, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee⁵.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'warning notice' see PARA 389. As to notices generally see PARA 303 note 11.

4 Legal Services Act 2007 Sch 4 para 22(1). The Board must give the approved regulator a copy of any advice obtained under Sch 4 para 22: Sch 4 para 23(1). The approved regulator may make to the Board written representations and if the Board authorises it to do so, oral representations, about the advice: Sch 4 para 23(2). The Board must make rules governing the making of oral and written representations: Sch 4 para 23(3). Representations under Sch 4 para 22 must be made within the period of 28 days beginning with the day on which the copy of the advice is given to the approved regulator or such longer period as the Board may specify in a particular case: Sch 4 para 23(4). Where oral representations are made, the Board must prepare a report of those representations: s 23(5). Before preparing that report, the Board must give the approved regulator a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made: s 23(6). The Board must, as soon as practicable after the end of the period within which representations under Sch 4 para 23 may be made, publish any advice given under Sch 4 para 22 and any written representations duly made under Sch 4 para 23 and the report (if any): Sch 4 para 24(1). Nothing in Sch 4 para 24(1) operates to prevent a person who gives advice under Sch 4 para 22 from publishing that advice or to prevent a person who makes representations under Sch 4 para 23 from publishing those representations: Sch 4 para 24(2). A person (the 'publisher') publishing any such material (whether under Sch 4 para 24(1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 4 para 24(3).

5 Legal Services Act 2007 Sch 4 para 22(2).

UPDATE

382 Advice

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 Sch 4 paras 22, 23(1), (2), (4)-(6), 24 is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 Sch 4 para 23(3) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/383. Decision by the Board.

383. Decision by the Board.

As from a day to be appointed the following provisions have effect¹. After considering the application and any accompanying material, any other information provided by the approved regulator, any advice obtained², any representations duly made³, and any other information which the Legal Services Board⁴ considers relevant to the application, the Board must decide whether to grant the application⁵. The Board may grant the application in whole or in part⁶.

The Board may refuse the application only if it is satisfied that:

- 163 (1) granting the application would be prejudicial to the regulatory objectives⁷;
- 164 (2) granting the application would be contrary to any provision made by or by virtue of the Legal Services Act 2007 or any other enactment or would result in any of the designation requirements ceasing to be satisfied in relation to the approved regulator⁸;
- 165 (3) granting the application would be contrary to the public interest⁹;
- 166 (4) the alteration would enable the approved regulator to authorise persons to carry on activities which are reserved legal activities in relation to which it is not a relevant approved regulator¹⁰;
- 167 (5) the alteration would enable the approved regulator to license persons under the Legal Services Act 2007¹¹ to carry on activities which are reserved legal activities in relation to which it is not a licensing authority¹²; or
- 168 (6) the alteration has been or is likely to be made otherwise than in accordance with the procedures (whether statutory or otherwise) which apply in relation to the making of the alteration¹³.

The Board must give notice of its decision (the 'decision notice') to the approved regulator¹⁴. Where the Board decides to refuse the application (in whole or in part), the decision notice must specify the reasons for that decision¹⁵. The Board must publish the decision notice¹⁶.

1 The Legal Services Act 2007 Sch 4 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 I.e. advice obtained under the Legal Services Act 2007 Sch 4 para 22 (see PARA 382). As to the meaning of 'approved regulator' see PARA 358.

3 I.e. representations duly made under the Legal Services Act 2007 Sch 4 para 23 (see PARA 382).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 4 para 25(1). Where an application is granted under Sch 4 para 25(1) the alteration or alterations of the regulatory arrangements to which the application relates are approved and where a part of an application is granted under Sch 4 para 25(1), the alteration or alterations of the regulatory arrangements to which the part relates are approved: Sch 4 para 27(1), (2). This is without prejudice to the Board's power to give directions under s 32 (power to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements) (see PARA 388): Sch 4 para 27(3).

6 Legal Services Act 2007 Sch 4 para 25(2).

7 Legal Services Act 2007 Sch 4 para 25(3)(a). As to the meaning of 'regulatory objectives' see PARA 302. Schedule 4 para 25(3) applies in relation to any part of an application as if references to the application were to the part: Sch 4 para 25(5).

8 Legal Services Act 2007 Sch 4 para 25(3)(b). For these purposes the designation requirements are:

126 (1) a requirement that the approved regulator has appropriate internal governance arrangements in place (Sch 4 para 25(4)(a));

127 (2) a requirement that the applicant is competent, and has sufficient resources to perform the role of approved regulator in relation to the reserved legal activities in respect of which it is designated (Sch 4 para 25(4)(b)); and

128 (3) the requirements of Sch 4 para 13(2)(c)-(e) (see PARA 363) (Sch 4 para 25(4)(c)).

9 Legal Services Act 2007 Sch 4 para 25(3)(c).

10 Legal Services Act 2007 Sch 4 para 25(3)(d). As to the meaning of 'reserved legal activities' see PARA 512. As to the meaning of 'relevant approved regulator' see PARA 358.

11 le under the Legal Services Act 2007 Pt 5 (ss 71-111).

12 Legal Services Act 2007 Sch 4 para 25(3)(e). As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

13 Legal Services Act 2007 Sch 4 para 25(3)(f).

14 Legal Services Act 2007 Sch 4 para 25(6). As to notices generally see PARA 303 note 11.

15 Legal Services Act 2007 Sch 4 para 25(7).

16 Legal Services Act 2007 Sch 4 para 25(8).

UPDATE

383 Decision by the Board

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/384. Duty to comply with regulatory arrangements.

384. Duty to comply with regulatory arrangements.

As from a day to be appointed the following provisions have effect¹. A person who is a regulated person² in relation to an approved regulator has a duty to comply with the regulatory arrangements of the approved regulator³ as they apply to that person⁴.

This applies in relation to the Legal Services Board⁵ in its capacity as a licensing authority and its licensing rules, as it applies in relation to an approved regulator and its regulatory arrangements⁶.

1 The Legal Services Act 2007 s 176 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 A person is a regulated person in relation to an approved regulator if the person is authorised by the approved regulator to carry on an activity which is a reserved legal activity, or is not so authorised, but is a manager or employee of a person who is so authorised: Legal Services Act 2007 s 176(2). As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'manager' see PARA 369 note 17.

3 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'regulatory arrangements' see PARA 377.

4 Legal Services Act 2007 s 176(1).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

6 Legal Services Act 2007 s 176(3). As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

UPDATE

384 Duty to comply with regulatory arrangements

TEXT AND NOTES 1-4--Legal Services Act 2007 s 176(1), (2) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/385. Complaints procedure.

385. Complaints procedure.

As from a day to be appointed the following provisions have effect¹. The regulatory arrangements of an approved regulator² must make provision requiring each relevant authorised person³ to establish and maintain procedures for the resolution of relevant complaints⁴ or to participate in, or make arrangements to be subject to, such procedures established and maintained by another person, and provision for the enforcement of that requirement⁵.

1 The Legal Services Act 2007 s 112 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'regulatory arrangements' see PARA 377.

3 For these purposes 'relevant authorised person', in relation to an approved regulator, means a person in relation to whom the approved regulator is a relevant approved regulator: Legal Services Act 2007 s 112(3). For the purposes of s 112 and s 145 (as extended by s 161) a person authorised by the Claims Management Services Regulator under the Compensation Act 2006 Pt 2 (ss 4-15) to provide regulated claims management services is to be treated as a 'relevant authorised person' in relation to the Regulator: Legal Services Act 2007 s 161(2). As to the meaning of 'relevant approved regulator' see PARA 358. As to the meaning of 'Claims Management Services Regulator' see PARA 358 note 4. Section 112 applies in relation to the licensing rules of the Legal Services Board as it applies in relation to the regulatory arrangements of an approved regulator except that s 112(3) has effect as if for the definition of 'relevant authorised person' there were substituted 'relevant authorised person, in relation to the Board, means a person licensed by the Board under the Legal Services Act 2007 Pt 5' (ss 71-111): s 112(5). As to the Legal Services Board see s 2; and PARAS 303-326. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

4 For these purposes 'relevant complaint' in relation to a relevant authorised person, means a complaint which relates to an act or omission of that person and may be made under the scheme provided for by the Legal Services Act 2007 Pt 6 (ss 112-161): s 112(3).

5 Legal Services Act 2007 s 112(1). The provision made for the purposes of s 112(1) must satisfy such requirements as the Legal Services Board may, from time to time, specify for the purposes of s 112(1) and the Board must publish any such requirements: s 112(2), (4).

UPDATE

385 Complaints procedure

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 112(2), (4) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iii) Regulatory Arrangements/B. ALTERATION/386. Provision for redress.

386. Provision for redress.

As from a day to be appointed the following provisions have effect¹. The regulatory arrangements of an approved regulator² must not include any provision relating to redress³. This applies to licensing rules made by the Legal Services Board⁴ in its capacity as a licensing authority as it applies in relation to the regulatory arrangements of an approved regulator⁵.

However the above provisions do not prohibit the regulatory arrangements of an approved regulator from making provision requiring, or authorising the approved regulator to require, a relevant authorised person⁶:

- 169 (1) to investigate whether there are any persons who may have a claim⁷ against the relevant authorised person in relation to a matter specified by the approved regulator⁸;
- 170 (2) to provide the approved regulator with a report on the outcome of the investigation⁹;
- 171 (3) to identify persons ('affected persons') who may have such a claim¹⁰;
- 172 (4) to notify affected persons that they may have such a claim¹¹;
- 173 (5) to provide affected persons with information about the relevant authorised person's complaints procedures and the ombudsman scheme¹²;
- 174 (6) to ensure that the relevant authorised person's complaints procedures operate as if an affected person had made a complaint against the relevant authorised person in respect of the act or omission to which the claim relates¹³.

1 The Legal Services Act 2007 ss 157, 158 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'regulatory arrangements' see PARA 377. If at the time the Legal Services Act 2007 s 157(2) comes into force the regulatory arrangements of an approved regulator contravene s 157(1), any provision relating to redress included in those regulatory arrangements ceases to have effect at that time, subject to s 157(3): s 157(2). An order under s 211 which appoints a day for the coming into force of s 157(2) may include transitional provision in respect of any proceedings which, immediately before that day are awaiting determination under any provision relating to redress made by an approved regulator: s 157(3). At the date at which this volume states the law no such day had been appointed. Section 157(3) is without prejudice to any other transitional provision which may be made by or under the Legal Services Act 2007 s 157(3).

3 Legal Services Act 2007 s 157(1). For these purposes 'provision relating to redress' means any provision made in regulatory arrangements (whether it is statutory or non-statutory) for redress in respect of acts or omissions of authorised persons and any provision connected with such provision: s 157(4). For the purposes of s 157(4) 'authorised person' means an authorised person in relation to any activity which is a reserved legal activity: s 157(6). Nothing in s 157 prevents an approved regulator making:

- 129 (1) provision in its regulatory arrangements of the kind required by s 112 (requirement for authorised persons to have complaints procedures etc) (s 157(5)(a));
- 130 (2) indemnification arrangements or compensation arrangements (s 157(5)(b)); or
- 131 (3) provision which by virtue of s 158 is not prohibited by s 157 (s 157(5)(c)).

As to the meaning of 'compensation arrangements' see PARA 369 note 11.

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

5 Legal Services Act 2007 s 157(7).

6 Legal Services Act 2007 s 158(1). For the purposes of the Legal Services Act 2007 s 158 'relevant authorised person', in relation to an approved regulator, means a person authorised by that approved regulator to carry on an activity which is a reserved legal activity and a relevant authorised person's complaints procedures are the procedures established by that person, or which that person participates in or is subject to, in accordance with regulatory arrangements made in accordance with s 112 (see PARA 385): s 158(3). Section 158 applies in relation to the Legal Services Board in its capacity as a licensing authority as it applies in relation to an approved regulator, and in relation to the Board references to regulatory arrangements are to be read as references to the Board's licensing rules: s 158(4). As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

7 For this purpose 'claim', in relation to a relevant authorised person, means a claim for redress resulting from an act or omission of that person: Legal Services Act 2007 s 158(2).

8 Legal Services Act 2007 s 158(1)(a).

9 Legal Services Act 2007 s 158(1)(b).

10 Legal Services Act 2007 s 158(1)(c).

11 Legal Services Act 2007 s 158(1)(d).

12 Legal Services Act 2007 s 158(1)(e).

13 Legal Services Act 2007 s 158(1)(f).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(iv) Performance Targets/387. Performance targets.

(iv) Performance Targets

387. Performance targets.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may set one or more performance targets relating to the performance by an approved regulator of any of its regulatory functions³ or direct an approved regulator to set one or more performance targets relating to the performance by the approved regulator of any of its regulatory functions⁴, if the Board is satisfied that the following conditions are satisfied⁵.

Those conditions are:

175 (1) that an act or omission of the approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives⁶; and

176 (2) that it is appropriate to take the action proposed⁷ in all the circumstances of the case (including in particular the impact of taking the action on the other regulatory objectives)⁸.

If the Board proposes to take action in respect of an approved regulator it must give notice⁹ to the approved regulator describing the action it proposes to take, specifying the acts or omissions to which the proposed action relates and any other facts which, in the opinion of the Board, justify the taking of that action and specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given) before which representations with respect to that action may be made¹⁰.

Before taking action the Board must consider any representations which are duly made¹¹.

1 The Legal Services Act 2007 s 31 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 s 31(1)(a). As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'regulatory functions' see PARA 301 note 4.

4 Legal Services Act 2007 s 31(1)(b). A direction under s 31(1)(b) may impose conditions with which the performance targets must conform: s 31(3). An approved regulator must publish any target set by it pursuant to a direction under s 31(1)(b): s 31(8). In exercising its regulatory functions, an approved regulator must seek to meet any performance target set for or by it under s 31: s 31(6).

5 Legal Services Act 2007 s 31(1). The Board must publish any target set or direction given by it under s 31: s 31(7). The Board may take such steps as it regards as appropriate to monitor the extent to which any performance target set under s 31 is being, or has been, met: s 31(9). The Board must prepare and issue a policy statement with respect to the exercise of its functions under s 31: see s 49(1)(a); and PARA 412. The powers of the Board under s 31 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

6 Legal Services Act 2007 s 31(2)(a).

- 7 le the action proposed under the Legal Services Act 2007 s 31(1).
- 8 Legal Services Act 2007 s 31(2)(b). As to the meaning of 'regulatory objectives' see PARA 302.
- 9 As to notices generally see PARA 303 note 11.
- 10 Legal Services Act 2007 s 31(4).
- 11 Legal Services Act 2007 s 31(5).

UPDATE

387 Performance targets

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(v) Directions/388. Making a direction.

(v) Directions

388. Making a direction.

As from a day to be appointed the following provisions have effect¹. The following provisions apply if the Legal Services Board² is satisfied:

- 177 (1) that an act or omission of an approved regulator³ (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives⁴;
- 178 (2) that an approved regulator has failed to comply with any requirement imposed on it by or under the Legal Services Act 2007 or any other enactment⁵; or
- 179 (3) that an approved regulator has failed to ensure that the exercise of its regulatory functions⁶ is not prejudiced by any of its representative functions⁷ or has failed to ensure that decisions relating to the exercise of its regulatory functions are, so far as reasonably practicable, taken independently from decisions relating to the exercise of its representative functions⁸.

If, in all the circumstances of the case, the Board is satisfied that it is appropriate to do so, it may direct⁹ the approved regulator to take:

- 180 (a) in a case within head (1) above, such steps as the Board considers will counter the adverse impact, mitigate its effect or prevent its occurrence or recurrence¹⁰;
- 181 (b) in a case within head (2) or (3) above, such steps as the Board considers will remedy the failure, mitigate its effect or prevent its recurrence¹¹.

The direction:

- 182 (i) may only require an approved regulator to take steps which it has power to take¹²;
- 183 (ii) may require an approved regulator to take steps with a view to the modification of any part of its regulatory arrangements¹³.

The Board may not exercise its powers¹⁴ so as to give a direction requiring an approved regulator to take steps in respect of a specific disciplinary case or other specific regulatory proceedings (as opposed to all, or a specified class of, such cases or proceedings)¹⁵.

1 The Legal Services Act 2007 ss 32, 33, Sch 7 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 s 32(1)(a). As to the meaning of 'regulatory objectives' see PARA 302.

5 Legal Services Act 2007 s 32(1)(b).

6 As to the meaning of 'regulatory functions' see PARA 301 note 4.

7 As to the meaning of 'representative functions' see PARA 363 note 6.

8 Legal Services Act 2007 s 32(1)(c).

9 For these purposes a direction to take steps includes a direction which requires an approved regulator to refrain from taking a particular course of action: Legal Services Act 2007 s 32(6). The power to give a direction under s 32 is subject to any provision made by or under any other enactment: s 32(7). The Board may take such steps as it regards as appropriate to monitor the extent to which a direction under s 32 is being, or has been, complied with: s 32(8). The procedure under Sch 7 (see PARA 389 et seq) must be complied with before a direction is given under s 32: s 33, Sch 7 para 1.

10 Legal Services Act 2007 s 32(2)(a). In a case within s 32(1)(a), before giving a direction under s 32(2), the Board must in particular consider the impact of giving the direction on the other regulatory objectives: s 32(3).

11 Legal Services Act 2007 s 32(2)(b). The powers of the Board under ss 32, 33 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

12 Legal Services Act 2007 s 32(4)(a).

13 Legal Services Act 2007 s 32(4)(b). Where the Board revokes a direction under s 32 it must give the approved regulator to whom the direction was given notice of the revocation and publish that notice: s 32(9). As to notices generally see PARA 303 note 11.

14 Its powers under the Legal Services Act 2007 s 32.

15 Legal Services Act 2007 s 32(5). The Board must prepare and issue a policy statement with respect to the exercise of its functions under s 32: see s 49(1)(b); and PARA 412.

UPDATE

388 Making a direction

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 32 is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 s 33, Sch 7 para 1 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(v) Directions/389. Notification of the approved regulator.

389. Notification of the approved regulator.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must give the approved regulator a notice (a 'warning notice')³ accompanied by a copy of the proposed direction⁴. The approved regulator may make to the Board written representations and if the Board authorises it to do so, oral representations, about the proposed direction⁵. The Board must consider any representations duly made by the approved regulator⁶. Where oral representations are duly made, the Board must prepare a report of those representations⁷. Before preparing that report, the Board must give the approved regulator a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made⁸.

1 The Legal Services Act 2007 Sch 7 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358. The warning notice must:

132 (1) state that the Board proposes to give the approved regulator a direction in the form of the accompanying draft (Legal Services Act 2007 Sch 7 para 2(2)(a));

133 (2) specify why the Board is satisfied as mentioned in s 32(1), (2) (see PARA 388) (Sch 7 para 2(2)(b)); and

134 (3) specify a period within which the approved regulator may make representations with respect to the proposal (Sch 7 para 2(2)(c)).

The period specified in head (3) above must begin with the date on which the warning notice is given to the approved regulator and must not be less than 14 days: Sch 7 para 2(3). As to notices generally see PARA 303 note 11.

4 Legal Services Act 2007 Sch 7 para 2(1). Schedule 7 applies where the Board proposes giving a direction under the Legal Services Act 2007 s 32 (see PARA 388).

5 Legal Services Act 2007 Sch 7 para 2(4). The Board must make rules governing the making of oral and written representations: Sch 7 para 2(5).

6 Legal Services Act 2007 Sch 7 para 2(6).

7 Legal Services Act 2007 Sch 7 para 2(7).

8 Legal Services Act 2007 Sch 7 para 2(8).

UPDATE

389 Notification of the approved regulator

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 33, Sch 7 para 2(5) is 1 January 2009: SI 2008/3149. Day appointed in relation to Legal Services Act 2007 Sch 7 para 2(1)-(4), (6)-(8) is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(v) Directions/390. Advice.

390. Advice.

As from a day to be appointed the following provisions have effect¹. After complying with the notification provisions² the Legal Services Board³ must give each of the persons listed below a copy of the warning notice⁴ and the accompanying draft direction, a copy of any written representations duly made and a copy of the report (if any)⁵ and a notice specifying a period within which any advice⁶ must be given⁷. Those persons are:

- 184 (1) the Lord Chancellor⁸;
- 185 (2) the Office of Fair Trading⁹;
- 186 (3) the Consumer Panel¹⁰;
- 187 (4) the Lord Chief Justice¹¹; and
- 188 (5) such other persons as the Board considers it reasonable to consult in respect of the proposed direction¹².

The Board must give the approved regulator a copy of any advice given by the persons in heads (1) to (4) above¹³. The approved regulator may make to the Board written representations and, if the Board authorises it to do so, oral representations, about the advice¹⁴.

The Board must, as soon as practicable after the end of the period within which representations may be made¹⁵, publish any advice duly given¹⁶ and any written representations duly made¹⁷ and the report (if any)¹⁸.

1 The Legal Services Act 2007 Sch 7 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 See after complying with the Legal Services Act 2007 Sch 7 para 2 (see PARA 389).

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 As to the warning notice see PARA 389. As to notices generally see PARA 303 note 11.

5 See a copy of any written representations made under the Legal Services Act 2007 Sch 7 para 2 (see PARA 389) and a copy of the report (if any) prepared under Sch 7 para 2.

6 See advice under the Legal Services Act 2007 Sch 7 paras 4-7.

7 Legal Services Act 2007 Sch 7 para 3(1). A person (the 'consultee') to whom a copy of the warning notice is given under Sch 7 para 3(1) may, for the purposes of giving advice under Sch 7 paras 4-8, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee: Sch 7 para 9. As to the meaning of 'approved regulator' see PARA 358.

8 Legal Services Act 2007 Sch 7 para 3(2)(a). The Lord Chancellor must give the Board such advice as the Lord Chancellor thinks fit in respect of the proposed direction: Sch 7 para 4.

9 Legal Services Act 2007 Sch 7 para 3(2)(b). The Office of Fair Trading must give the Board such advice as it thinks fit regarding whether the proposed direction should be given: Sch 7 para 5(1). In deciding what advice to give the Office of Fair Trading must, in particular, have regard to whether giving the proposed direction would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 7 para 5(2). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to the meaning of 'reserved legal services' see PARA 512 note 2.

10 Legal Services Act 2007 Sch 7 para 3(2)(c). The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed direction should be given: Sch 7 para 6(1). In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact of the proposed direction on consumers: Sch 7 para 6(2). As to the meaning of 'consumers' see PARA 302 note 8.

11 Legal Services Act 2007 Sch 7 para 3(2)(d). The Board must give the Lord Chief Justice a copy of any advice duly given under Sch 7 paras 4-7 and a notice specifying a period within which any advice under Sch 7 para 8 must be given: Sch 7 para 8(1). The Lord Chief Justice must then give such advice as the Lord Chief Justice thinks fit regarding whether the proposed direction should be given: Sch 7 para 8(2). In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact of the proposed direction on the courts in England and Wales: Sch 7 para 8(3). As to the meaning of 'court' see PARA 302 note 13.

12 Legal Services Act 2007 Sch 7 para 3(2)(e). For the purposes of Sch 7, in relation to a proposed direction, 'selected consultee' means a person within Sch 7 para 3(2)(e): Sch 7 para 3(3). A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed direction: Sch 7 para 7.

13 Legal Services Act 2007 Sch 7 para 10(1).

14 Legal Services Act 2007 Sch 7 para 10(2). The Board must make rules governing the making of oral and written representations: Sch 7 para 10(3). Such rules are non-statutory and are not set out in this work. Representations under Sch 7 para 10 must be made within the period of 28 days beginning with the day on which the copy of the advice is given to the approved regulator or such longer period as the Board may specify in a particular case: Sch 7 para 10(4). Where oral representations are made, the Board must prepare a report of those representations: Sch 7 para 10(5). Before preparing that report, the Board must give the approved regulator a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made: Sch 7 para 10(6).

15 *le* representation under the Legal Services Act 2007 Sch 7 para 10.

16 *le* advice given under the Legal Services Act 2007 Sch 7 paras 4-8.

17 *le* written representation and the report prepared under the Legal Services Act 2007 Sch 7 para 10.

18 Legal Services Act 2007 Sch 7 para 11(1). Nothing in Sch 7 para 11(1) operates to prevent a person who gives advice under Sch 7 paras 4-8 from publishing that advice or to prevent a person who makes representations under Sch 7 para 10 from publishing those representations: Sch 7 para 11(2). A person (the 'publisher') publishing any such material (whether under Sch 7 para 11(1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 7 para 11(3).

UPDATE

390 Advice

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 33, Sch 7 para 10(3) is 1 January 2009: SI 2008/3149. Day appointed in relation to Legal Services Act 2007 Sch 7 paras 10(1), (2), (4)-(6), 11 is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(v) Directions/391. Decision of the Board.

391. Decision of the Board.

As from a day to be appointed the following provisions have effect¹. After considering any advice duly given², any representations duly made³ and any other information which the Legal Services Board⁴ considers relevant, the Board must decide whether to give the approved regulator the proposed direction⁵. The Board must give notice of its decision (the 'decision notice') to the approved regulator⁶. Where the Board decides to give the proposed direction, the decision notice must contain the direction, state the time at which the direction is to take effect and specify the Board's reasons for the decision to give the directions⁷. The Board must publish the decision notice⁸.

1 The Legal Services Act 2007 Sch 7 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie any advice given under the Legal Services Act 2007 Sch 7 paras 4-8 (see PARA 390).

3 Ie any representations made under the Legal Services Act 2007 Sch 7 para 10 (see PARA 390).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 7 para 12(1). As to the meaning of 'approved regulator' see PARA 358.

6 Legal Services Act 2007 Sch 7 para 12(2). As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 Sch 7 para 12(3).

8 Legal Services Act 2007 Sch 7 para 12(4).

UPDATE

391-393 Decision of the Board ... Public censure

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(v) Directions/392. Enforcement.

392. Enforcement.

As from a day to be appointed the following provisions have effect¹. If at any time it appears to the Legal Services Board² that an approved regulator³ has failed to comply with a relevant direction⁴, the Board may make an application to the High Court⁵. If, on an application, the High Court decides that the approved regulator has failed to comply with the direction in question, it may order the approved regulator to take such steps as the High Court directs for securing that the direction is complied with⁶.

1 The Legal Services Act 2007 s 34 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358.

4 I.e. a direction given under the Legal Services Act 2007 s 32 (see PARA 388).

5 Legal Services Act 2007 s 34(1). Section 34 is without prejudice to any other powers conferred on the Board by Pt 4 (ss 27-70). The powers of the Board under s 34 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

6 Legal Services Act 2007 s 34(2).

UPDATE

391-393 Decision of the Board ... Public censure

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vi) Censure and Financial Penalties/393. Public censure.

(vi) Censure and Financial Penalties

393. Public censure.

As from a day to be appointed the following provisions have effect¹. The following applies if the Legal Services Board² is satisfied that an act or omission of an approved regulator³ (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives⁴ and that it is appropriate to act using public censure⁵ in all the circumstances of the case (including in particular the impact of so acting on the other regulatory objectives)⁶.

The Board may publish a statement censuring the approved regulator for the act or omission (or series of acts or omissions)⁷. If the Board proposes to publish such a statement in respect of an approved regulator, it must give notice to the approved regulator:

- 189 (1) stating that the Board proposes to publish such a statement and setting out the terms of the proposed statement⁸;
- 190 (2) specifying the acts or omissions to which the proposed statement relates⁹; and
- 191 (3) specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed statement may be made¹⁰.

Before publishing the statement, the Board must consider any representations which are duly made¹¹.

1 The Legal Services Act 2007 ss 35, 36 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358.

4 As to the meaning of 'regulatory objectives' see PARA 302.

5 Ie act under the Legal Services Act 2007 s 35.

6 Legal Services Act 2007 s 35(1). The powers of the Board under ss 35, 36 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

7 Legal Services Act 2007 s 35(2). The Board must prepare and issue a policy statement with respect to the exercise of its functions under s 35: see s 49(1)(c); and PARA 412.

8 Legal Services Act 2007 s 36(1)(a). Before varying any proposed statement set out in a notice under s 36(1)(a), the Board must give notice to the approved regulator setting out the proposed variation and the reasons for it and specifying the time (not being earlier than the end of the period of 28 days beginning with the day on which the notice is given to the approved regulator) before which representations with respect to the proposed variation may be made: s 36(3). Before varying the proposal, the Board must consider any representations which are duly made: s 36(4). As to notices generally see PARA 303 note 11.

- 9 Legal Services Act 2007 s 36(1)(b).
- 10 Legal Services Act 2007 s 36(1)(c).
- 11 Legal Services Act 2007 s 36(2).

UPDATE

391-393 Decision of the Board ... Public censure

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vi) Censure and Financial Penalties/394. Financial penalties.

394. Financial penalties.

As from a day to be appointed the following provisions have effect¹. The following applies if the Legal Services Board² is satisfied that an approved regulator³ has failed to comply with a particular requirement⁴ and that, in all the circumstances of the case, it is appropriate to impose a financial penalty on the approved regulator⁵. The Board must make rules prescribing the maximum amount of a penalty which may be imposed⁶. The Board may impose a penalty, in respect of the failure, of such an amount as it considers appropriate, but not exceeding the maximum amount prescribed by the rules⁷. A penalty under these provisions is payable to the Board⁸.

1 The Legal Services Act 2007 ss 37, 40 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358.

4 The Legal Services Act 2007 s 37 applies to any requirement imposed on the approved regulator by rules under s 30 (internal governance rules) (see PARA 374), by a direction given under s 32 (Board directions) (see PARA 388) or by s 51 (control of practising fees charged by approved regulators) or by rules under s 51 (see PARA 414); s 37(2).

5 Legal Services Act 2007 s 37(1). If the whole or any part of a penalty is not paid by the time by which it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17: s 40(1). If an appeal is made under s 39 (see PARA 396) in relation to a penalty, the penalty is not required to be paid until the appeal has been determined or withdrawn: s 40(2). If the Board grants an application under s 38(6) (see PARA 395) in relation to a penalty but any portion of the penalty is not paid by the time specified in relation to it by the Board under s 38(6), the Board may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately: s 40(3). Where a penalty, or any portion of it, has not been paid by the time when it is required to be paid and no appeal relating to the penalty has been made under s 39 (see PARA 396) during the period within which such an appeal can be made or an appeal has been made under s 39 and determined or withdrawn, the Board may recover from the approved regulator, as a debt due to the Board, any of the penalty and any interest which has not been paid: s 40(4). The powers of the Board under ss 37, 40 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7. References in ss 38-40 to a 'penalty' are to a penalty under s 37: s 37(7).

6 Legal Services Act 2007 s 37(4). Any rules made by the Board under s 37(4) must be made by statutory instrument and the Statutory Instrument Act 1946 applies to the Board's powers to make those rules as if the Board were a Minister of the Crown: s 204(2). At the date at which this volume states the law no such rules had been made. Rules may be made only under s 37(4) with the consent of the Lord Chancellor: s 37(5).

7 Legal Services Act 2007 s 37(3). The Board must prepare and issue a policy statement with respect to the exercise of its functions under s 37: see s 49(1)(d); and PARA 412. As to factors the Board must consider in relation to determining the amount under s 37 see PARA 412 note 7.

8 Legal Services Act 2007 s 37(6). Any sum so received is payable into the Consolidated Fund: see s 175(1)(b). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

UPDATE

394 Financial penalties

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 37(1)-(3), (6), (7) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 ss 37(4), (5), 204 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vi) Censure and Financial Penalties/395. Procedure for imposing financial penalties.

395. Procedure for imposing financial penalties.

As from a day to be appointed the following provisions have effect¹. If the Legal Services Board² proposes to impose a penalty³ on an approved regulator, it must give notice⁴ to the approved regulator:

- 192 (1) stating that the Board proposes to impose such a penalty and the amount to be imposed⁵;
- 193 (2) specifying the failure to which the proposed penalty relates⁶;
- 194 (3) specifying the other facts which, in the Board's opinion, justify the imposition of a penalty and the amount of the penalty⁷; and
- 195 (4) specifying the time⁸ before which representations with respect to the proposed penalty may be made⁹.

Before imposing a penalty on an approved regulator, the Board must consider any representations which are duly made¹⁰. As soon as practicable after imposing a penalty, the Board must give notice¹¹ to the approved regulator:

- 196 (a) stating that it has imposed a penalty on the approved regulator and its amount¹²;
- 197 (b) specifying the failure to which the penalty relates¹³;
- 198 (c) specifying the other facts which, in the Board's opinion, justify the imposition of the penalty and its amount¹⁴; and
- 199 (d) specifying a time (not being earlier than the end of the period of three months beginning with the day on which the notice is given to the approved regulator), before which the penalty is required to be paid¹⁵.

1 The Legal Services Act 2007 s 38 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'penalty' see the Legal Services Act 2007 s 37; PARA 394 note 5 (definition applied by s 37(7)).

4 As to the meaning of 'approved regulator' see PARA 358. As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 s 38(1)(a). Where the Board proposes to vary the amount of a proposed penalty stated in a notice under s 38(1)(a), the Board must give notice to the approved regulator setting out the proposed variation and the reasons for it and specifying the time (not being earlier than the end of the period of 21 days beginning with the day on which the notice is published under s 38(8)) before which representations with respect to the proposed variation may be made: s 38(3). Before varying the proposal, the Board must consider any representations which are duly made: s 38(4). The powers of the Board under s 38 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

6 Legal Services Act 2007 s 38(1)(b).

7 Legal Services Act 2007 s 38(1)(c).

8 This time must not be earlier than the end of the period of 21 days beginning with the day on which the notice is published under s 38(8).

9 Legal Services Act 2007 s 38(1)(d).

10 Legal Services Act 2007 s 38(2).

11 The Board must publish any notice given under the Legal Services Act 2007: s 38(8).

12 Legal Services Act 2007 s 38(5)(a). The approved regulator may, within the period of 21 days beginning with the day on which it is given the notice under s 38(5), make an application to the Board for it to specify different times by which different portions of the penalty are to be paid: s 38(6). If an application is made under s 38(6) in relation to a penalty, the penalty is not required to be paid until the application has been determined: s 38(7).

13 Legal Services Act 2007 s 38(5)(b).

14 Legal Services Act 2007 s 38(5)(c).

15 Legal Services Act 2007 s 38(5)(d).

UPDATE

395-396 Procedure for imposing financial penalties, Appeals against financial penalties

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vi) Censure and Financial Penalties/396. Appeals against financial penalties.

396. Appeals against financial penalties.

As from a day to be appointed the following provisions have effect¹. An approved regulator² on whom a penalty³ is imposed may appeal to the court on one or more of the appeal grounds⁴. The appeal grounds are:

- 200 (1) that the imposition of the penalty was not within the powers⁵ of the Legal Services Board⁶;
- 201 (2) that any of the procedural requirements⁷ have not been complied with in relation to the imposition of the penalty and the interests of the approved regulator have been substantially prejudiced by the non-compliance⁸;
- 202 (3) that the amount of the penalty is unreasonable⁹;
- 203 (4) that it was unreasonable of the Board to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid¹⁰.

On any such appeal, where the court considers it appropriate to do so in all the circumstances of the case and if satisfied of one or more of the appeal grounds, the court may quash the penalty, substitute a penalty of such lesser amount as the court considers appropriate¹¹ or in the case of the appeal ground in head (4), substitute for any time imposed by the Board a different time or times¹².

1 The Legal Services Act 2007 s 39 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358.

3 As to the meaning of 'penalty' see the Legal Services Act 2007 s 37; PARA 394 note 5 (definition applied by s 37(7)). Except as provided by s 39, the validity of a penalty is not to be questioned by any legal proceedings whatever: s 39(7).

4 Legal Services Act 2007 s 39(1). An appeal under s 39(1) must be made within the period of three months beginning with the day on which the notice under s 38(5) (see PARA 395) is given to the approved regulator in respect of the penalty or where the appeal relates to a decision of the Board on an application by the approved regulator under s 38(6), within the period of three months beginning with the day on which the approved regulator is notified of the decision: s 39(3). For the purposes of s 39 'court' means the High Court: s 39(8). The powers of the Board under s 39 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7. As to the meaning of 'court' see PARA 302 note 13. As to notices generally see PARA 303 note 11.

5 The power of the Board under the Legal Services Act 2007 s 37 (see PARA 394).

6 Legal Services Act 2007 s 39(2)(a). As to the Legal Services Board see s 2; and PARAS 303-326.

7 The any of the requirements of the Legal Services Act 2007 s 38 (see PARA 395).

8 Legal Services Act 2007 s 39(2)(b).

9 Legal Services Act 2007 s 39(2)(c).

10 Legal Services Act 2007 s 39(2)(d).

11 Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such time, as it considers just and equitable: Legal Services Act 2007 s 39(5).

12 Legal Services Act 2007 s 39(4). Where the court specifies as a time by which the penalty, or a portion of the penalty, is to be paid a time before the determination of the appeal under s 39, it may require the payment of interest on the penalty, or portion, from that time at such rate as it considers just and equitable: s 39(6).

UPDATE

395-396 Procedure for imposing financial penalties, Appeals against financial penalties

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/A. MAKING/397. Generally.

(vii) Intervention Directions

A. MAKING

397. Generally.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may give an approved regulator³ an intervention direction in relation to any of the approved regulator's regulatory functions⁴ if the Board is satisfied:

- 204 (1) that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives⁵; and
- 205 (2) that it is appropriate to give the intervention direction in all the circumstances of the case (including in particular the impact of giving the direction on the other regulatory objectives)⁶.

An intervention direction, in relation to a regulatory function of an approved regulator, is a direction that the regulatory function is to be exercised by the Board⁷ or a person nominated by it and that the approved regulator must comply with any instructions of the Board or its nominee in relation to the exercise of the function⁸.

1 The Legal Services Act 2007 s 41, Sch 8 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358.

4 As to the meaning of 'regulatory functions' see PARA 301 note 4.

5 Legal Services Act 2007 s 41(1)(a). As to the meaning of 'regulatory objectives' see PARA 302. The powers of the Board under s 41 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

6 Legal Services Act 2007 s 41(1)(b). The Board may not determine that it is appropriate to give an intervention direction unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under ss 31-40 (see PARAS 387 et seq): s 41(3). The Board must prepare and issue a policy statement with respect to the exercise of its functions under s 41: see s 49(1)(e); and PARA 412.

7 Legal Services Act 2007 s 41(2)(a). The Board must make rules as to the persons it may nominate for the purposes of s 41(2)(a): s 41(5). Such rules are non-statutory and are not set out in this work.

8 Legal Services Act 2007 s 41(2)(b). Schedule 8 paras 1-12 (see PARA 398) make provision about the procedure which must be complied with before an intervention direction is given and the manner in which such a direction is to be given: s 41(4), Sch 8 para 1.

UPDATE

397 Generally

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 41(1)-(3) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 s 41(4), (5), Sch 8 para 1 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/A. MAKING/398. Notification of the approved regulator.

398. Notification of the approved regulator.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must give the approved regulator³ a notice (a 'warning notice') accompanied by a draft of the proposed intervention direction⁴. The approved regulator may make to the Board written representations and, if the Board authorises it to do so, oral representations, about the proposed intervention notice⁵. Where oral representations are made the Board must make a report of those representations⁶. The Board must publish any written representations duly made by the approved regulator along with the report (if any)⁷.

1 The Legal Services Act 2007 Sch 8 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 Sch 8 para 2(1). The warning notice must:

135 (1) state that the Board proposes to give the approved regulator an intervention direction in the form of the accompanying draft and the time when it is proposed that direction should take effect (Sch 8 para 2(2)(a)); and

136 (2) state the reasons why the Board is satisfied of the matters mentioned in s 41(1)(a), (b) (see PARA 397) (Sch 8 para 2(2)(b)).

As to the meaning of 'intervention direction' see PARA 397. The Board must publish a copy of the warning notice: Sch 8 para 2(3). As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 Sch 8 para 2(4). The Board must make rules governing the making of written and oral representations: Sch 8 para 2(5). Such rules are non-statutory and are not set out in this work. Any representations under Sch 8 para 2(4) must be made before the end of the period of 28 days beginning with the day on which the warning notice is given to the approved regulator or such longer period as the Board may specify in a particular case: Sch 8 para 2(6).

6 Legal Services Act 2007 Sch 8 para 2(7). Before preparing that report, the Board must give the approved regulator a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made: Sch 8 para 2(8).

7 Legal Services Act 2007 Sch 8 para 10(1)(b).

UPDATE

398 Notification of the approved regulator

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 Sch 8 paras 2(1)-(4), (6)-(8), 10(1) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 Sch 8 para 2(5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/A. MAKING/399. Advice.

399. Advice.

As from a day to be appointed the following provisions have effect¹. After complying with the notification provisions² the Legal Services Board³ must give each of the persons listed below a copy of the warning notice⁴ and accompanying draft⁵, a copy of any written representations duly made⁶ and a copy of the report (if any)⁷ and a notice specifying a period within which any advice⁸ must be given⁹. Those persons are:

- 206 (1) the Lord Chancellor¹⁰;
- 207 (2) the Office of Fair Trading¹¹;
- 208 (3) the Consumer Panel¹²;
- 209 (4) the Lord Chief Justice¹³; and
- 210 (5) such other persons as the Board considers it reasonable to consult in respect of the proposed intervention direction¹⁴.

The Board must give the approved regulator a copy of any advice duly given by the persons in heads (1) to (4) above¹⁵ and publish that advice¹⁶.

The approved regulator and any body that represents persons authorised by the approved regulator to carry on activities which are reserved legal activities may make to the Board written representations and, if the Board authorises it to do so, oral representations, about the advice¹⁷. The Board may allow any other person to make written or oral representations about the advice¹⁸. Where oral representations are made the Board must prepare a report of those representations¹⁹.

1 The Legal Services Act 2007 Sch 8 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie the provisions of the Legal Services Act 2007 Sch 8 para 2 (see PARA 398).

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 As to the warning notice see PARA 398. As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 Sch 8 para 3(1)(a). A person (the 'consultee') to whom a copy of the warning notice is given under Sch 8 para 3(1) may, for the purposes of giving advice under Sch 8 paras 4-8, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee: Sch 8 para 9.

6 Ie made under the Legal Services Act 2007 Sch 8 para 2 (see PARA 398).

7 Legal Services Act 2007 Sch 8 para 3(1)(b).

8 Ie advice under the Legal Services Act 2007 Sch 8 paras 4-7.

9 Legal Services Act 2007 Sch 8 para 3(1)(c).

10 Legal Services Act 2007 Sch 8 para 3(2)(a). The Lord Chancellor must give the Board such advice as the Lord Chancellor thinks fit in respect of the proposed intervention direction: Sch 8 para 4.

11 Legal Services Act 2007 Sch 8 para 3(2)(b). The Office of Fair Trading must give the Board such advice as it thinks fit regarding whether the proposed intervention direction should be given: Sch 8 para 5(1). In deciding what advice to give, the Office of Fair Trading must, in particular, have regard to whether giving the proposed intervention direction would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 8 para 5(2). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to the meaning of 'reserved legal services' see PARA 512 note 2.

12 Legal Services Act 2007 Sch 8 para 3(2)(c). The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed intervention direction should be given: Sch 8 para 6(1). In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact of the proposed direction on consumers: Sch 8 para 6(2). As to the meaning of 'consumers' see PARA 302 note 8.

13 Legal Services Act 2007 Sch 8 para 3(2)(d). The Board must give the Lord Chief Justice a copy of any advice duly given under Sch 8 paras 4-7 and a notice specifying a period within which any advice under Sch 8 para 8 must be given: Sch 8 para 8(1). The Lord Chief Justice must then give such advice as the Lord Chief Justice thinks fit regarding whether the proposed intervention direction should be given: Sch 8 para 8(2). In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact of the proposed intervention direction on the courts in England and Wales: Sch 8 para 8(3). As to the meaning of 'court' see PARA 302 note 13.

14 Legal Services Act 2007 Sch 8 para 3(2)(e). In Sch 8 paras 1-12, in relation to a proposed intervention direction, 'selected consultee' means a person within Sch 8 para 3(2)(e): Sch 8 para 3(3). A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed intervention direction: Sch 8 para 7.

15 See under the Legal Services Act 2007 Sch 8 paras 4-8. As to the meaning of 'approved regulator' see PARA 358.

16 Legal Services Act 2007 Sch 8 para 10(1)(a). Such advice is to be published along with any written representations made or report prepared under the Sch 8 para 2: see Sch 8 para 10(1)(b); and PARA 398. Nothing in Sch 8 para 10 operates to prevent a person who gives advice under Sch 8 paras 4-8 from publishing that advice or to prevent a person who makes representations under Sch 8 para 2 (see PARA 398) or Sch 8 para 10 from publishing those representations: Sch 8 para 11(1). A person (the 'publisher') publishing any such material (whether under Sch 8 para 10 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 8 para 11(2).

17 Legal Services Act 2007 Sch 8 para 10(2), (3). The Board must make rules governing the making of oral and written representations: Sch 8 para 10(5). Such rules are non-statutory and are not set out in this work. Representations under Sch 8 para 10 must be made within the period of 28 days beginning with the day on which the representations and advice are published under Sch 8 para 10(1)(b) (see PARA 398) or such longer period as the Board may specify in a particular case: Sch 8 para 10(6). As to the meaning of 'reserved legal activity' see PARA 512.

18 Legal Services Act 2007 Sch 8 para 10(4).

19 Legal Services Act 2007 Sch 8 para 10(7). Before preparing that report, the Board must:

137 (1) give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations (Sch 8 para 10(8)(a)); and

138 (2) have regard to any comments duly made (Sch 8 para 10(8)(b)).

The Board must, as soon as reasonably practicable after the end of the period within which representations may be made under Sch 8 para 10, publish any written representations duly made and the report (if any) prepared under Sch 8 para 10(7): Sch 8 para 10(9).

UPDATE

399 Advice

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 Sch 8 para 10(1)-(4), (6)-(9) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 Sch 8 para 10(5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/A. MAKING/400. Decision of the Board.

400. Decision of the Board.

As from a day to be appointed the following provisions have effect¹. After considering any advice duly given², any representations duly made³ and any other information which the Legal Services Board⁴ considers relevant, the Board must decide whether to give such a direction⁵. Where it decides to give an intervention direction, it may decide to give an intervention direction in the form of the proposed intervention direction or to amend the form of the proposed intervention direction and give an intervention direction in that amended form⁶. The Board must give notice of its decision ('the decision notice') to the approved regulator⁷ and must publish the decision notice⁸.

1 The Legal Services Act 2007 Sch 8 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 See under the Legal Services Act 2007 Sch 8 para 10(4)-(8) (see PARA 399).

3 See under the Legal Services Act 2007 Sch 8 para 2 (see PARA 398) or Sch 8 para 10 (see PARAS 398-399).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 8 para 12(1). As to the meaning of 'intervention direction' see PARA 397.

6 Legal Services Act 2007 Sch 8 para 12(2). Where the Board decides to give an intervention direction, the decision notice must:

139 (1) contain the intervention direction (Sch 8 para 12(4)(a));

140 (2) state the time at which the intervention direction is to take effect (Sch 8 para 12(4)(b));

141 (3) specify the reasons why the Board is satisfied of the matters mentioned in s 41(1)(a), (b) (see PARA 397) (Sch 8 para 12(4)(c)); and

142 (4) if the decision is under Sch 8 para 12(2)(b), set out the nature of any amendments made and the reasons for them (Sch 8 para 12(4)(d)).

The time specified under Sch 8 para 12(4)(b) must not be before the time specified in the warning notice in accordance with Sch 8 para 2(2)(a) (see PARA 398) or the time the decision notice is given to the approved regulator: Sch 8 para 12(5). As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 Sch 10 para 12(3). As to the meaning of 'approved regulator' see PARA 358.

8 Legal Services Act 2007 Sch 10 para 12(6).

UPDATE

400 Decision of the Board

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/B. EFFECT/401. Effect of intervention directions.

B. EFFECT

401. Effect of intervention directions.

As from a day to be appointed the following provisions have effect¹. The following applies where an intervention direction² has effect in respect of a function of an approved regulator (the 'relevant function')³.

The approved regulator must give the specified person⁴ all such assistance, in connection with the proposed exercise of the relevant function by the specified person in pursuance of the direction, as the approved regulator is reasonably able to give⁵.

On an application by the specified person (or a person appointed by the specified person to act on its behalf) a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to enter and search the premises of the approved regulator and take possession of any written or electronic records found on the premises⁶. The person so authorised may, for the purpose of the exercise by the specified person of the relevant function, take copies of written or electronic records found on a search carried out by virtue of the warrant⁷. The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the exercise by the specified person of the relevant function⁸.

1 The Legal Services Act 2007 ss 42, 43 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'intervention direction' see PARA 397.

3 Legal Services Act 2007 s 42(1). As to the meaning of 'approved regulator' see PARA 358.

4 For these purposes 'specified person' means the Legal Services Board or, where a person is nominated by it as mentioned in the Legal Services Act 2007 s 41(2) (see PARA 397), that person: s 42(9). The Legal Services Board must make rules as to the persons a specified person may appoint for the purposes of s 42(3): s 42(10). Such rules are non-statutory and are not set out in this work. As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. The powers of the Board under ss 42, 43 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

5 Legal Services Act 2007 s 42(2). If at any time it appears to the Board that an approved regulator has failed to comply with an obligation imposed on it by, or by virtue of, an intervention direction or s 42(2), the Board may make an application to the High Court under s 43: s 43(1). If, on an application under s 43(1), the High Court decides that the approved regulator has failed to comply with the obligation in question, it may order the approved regulator to take such steps as the High Court directs for securing that the obligation is complied with: s 43(2). Section 43 is without prejudice to any other powers conferred on the Board by Pt 4 (ss 27-70): s 43(3).

6 Legal Services Act 2007 s 42(3). The Lord Chancellor must make regulations:

143 (1) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant (s 42(6)(a)); and

- 144 (2) regulating the exercise of a power conferred by a warrant issued under s 42(3) or by s 42(4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise) (s 42(6)(b)).

Regulations under s 42(6)(b) must in particular make provision as to the circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under s 42(3) may be copied or must be returned: s 42(7). But the Lord Chancellor may not make regulations under s 41(6) unless they are made in accordance with a recommendation made by the Board or the Lord Chancellor has consulted the Board about the making of the regulations: s 41(8). At the date at which this volume states the law no such regulations had been made.

7 Legal Services Act 2007 s 42(4).

8 Legal Services Act 2007 s 42(5).

UPDATE

401 Effect of intervention directions

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 ss 42(1)-(5), 43 is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 s 42(6)-(10) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/C. REVOCATION/402. Generally.

C. REVOCATION

402. Generally.

As from a day to be appointed the following provisions have effect¹. Where an intervention direction² has effect in respect of a regulatory function of an approved regulator³ the approved regulator may apply to the Legal Services Board⁴ for the Board to revoke the direction⁵ or the Board may give the approved regulator a notice stating the Board's intention to revoke the direction⁶. An intervention direction has effect until such time as it is revoked by the Board (whether on the application of the approved regulator or otherwise)⁷.

1 The Legal Services Act 2007 s 44, Sch 8 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'intervention direction' see PARA 397.

3 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'regulatory function' see PARA 301 note 4.

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 8 para 13(1)(a). An application under Sch 8 para 13(1)(a) must be made in the form and manner specified by the Board and be accompanied by such material as the applicant considers is likely to be needed for the purposes of Sch 8: Sch 8 para 13(2).

6 Legal Services Act 2007 Sch 8 para 13(1)(b). As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 s 44(1). Sch 8 Pt 2 (see PARAS 403-404) makes provision about the procedure which must be complied with before an intervention direction is revoked and the manner in which notice of the revocation is to be given: s 44(2). The powers of the Board under s 44 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

UPDATE

402 Generally

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 44(1), Sch 8 para 13(1), (2)(b) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 s 44(2), Sch 8 para 13(2)(a) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/C. REVOCATION/403. Advice.

403. Advice.

As from a day to be appointed the following provisions have effect¹. Where the Legal Services Board² has received an application for the revocation of an intervention direction³ it must give each of the persons listed below a copy of the application, a copy of any material which accompanied it and a notice specifying a period within which any advice⁴ must be given⁵. Where the Board has given a notice stating its intention to revoke the direction⁶ it must give each of the persons listed below a copy of the notice and a notice specifying a period within which any advice⁷ must be given⁸.

Those persons are:

- 211 (1) the Lord Chancellor⁹;
- 212 (2) the Office of Fair Trading¹⁰;
- 213 (3) the Consumer Panel¹¹;
- 214 (4) the Lord Chief Justice¹²; and
- 215 (5) such other persons as the Board considers it reasonable to consult in respect of the proposed revocation¹³.

The Board must give the approved regulator¹⁴ a copy of any advice given¹⁵ and publish that advice¹⁶. The approved regulator and any body which represents persons authorised by the approved regulator to carry on activities which are reserved legal activities¹⁷ may make to the Board written representations and, if the Board authorises it to do so, oral representations, about the advice¹⁸. The Board may allow any other person to make written or oral representations about the advice¹⁹. Where oral representations are made the Board must prepare a report of those representations²⁰.

1 The Legal Services Act 2007 Sch 8 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Ie an application under the Legal Services Act 2007 Sch 8 para 13(1)(a) (see PARA 402). As to the meaning of 'intervention direction' see PARA 397.

4 Ie advice under the Legal Services Act 2007 Sch 8 paras 15-18. As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 Sch 8 para 14(1). A person to whom a copy of the application or notice is given under Sch 8 para 14(1) or Sch 8 para 14(2) may, for the purposes of giving advice under Sch 8 paras 15-19, request the approved regulator or any other person to provide that person with such additional information as may be specified by that person: Sch 8 para 20.

6 Ie a notice under the Legal Services Act 2007 Sch 8 para 13(1)(b) (see PARA 402).

7 Ie advice under the Legal Services Act 2007 Sch 8 paras 15-18.

8 Legal Services Act 2007 Sch 8 para 14(2).

9 Legal Services Act 2007 Sch 8 para 14(3)(a). The Lord Chancellor must give the Board such advice as the Lord Chancellor thinks fit in respect of the proposed revocation: Sch 8 para 15.

10 Legal Services Act 2007 Sch 8 para 14(3)(b). The Office of Fair Trading must give the Board such advice as it thinks fit regarding the proposed revocation: Sch 8 para 16(1). In deciding what advice to give, the Office of Fair Trading must, in particular, have regard to whether revoking the intervention direction would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 8 para 16(2). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to the meaning of 'reserved legal services' see PARA 512 note 2.

11 Legal Services Act 2007 Sch 8 para 14(3)(c). The Consumer Panel must give the Board such advice as it thinks fit regarding the proposed revocation: Sch 8 para 17(1). In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact which revoking the intervention direction would have on consumers: Sch 8 para 17(2). As to the meaning of 'consumers' see PARA 302 note 8.

12 Legal Services Act 2007 Sch 8 para 14(3)(d). The Board must give the Lord Chief Justice a copy of any advice duly given under Sch 8 paras 15-18 and a notice specifying a period within which any advice under Sch 8 para 19 must be given: Sch 8 para 19(1). The Lord Chief Justice must then give the Board such advice as the Lord Chief Justice thinks fit in respect of the proposed revocation: Sch 8 para 19(2). In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact which revoking the intervention direction would have on the courts in England and Wales: Sch 8 para 19(3). As to the meaning of 'court' see PARA 302 note 13.

13 Legal Services Act 2007 Sch 8 para 14(3)(e). In Sch 8 Pt 2 in relation to an application or notice, 'selected consultee' means a person within Sch 8 para 14(3)(e): Sch 8 para 14(4). A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed revocation: Sch 8 para 18.

14 As to the meaning of 'approved regulator' see PARA 358.

15 In any advice given under the Legal Services Act 2007 Sch 8 paras 15-19.

16 Legal Services Act 2007 Sch 8 para 21(1). Nothing in Sch 8 para 21 operates to prevent a person who gives advice under Sch 8 paras 15-19 from publishing that advice or to prevent a person who makes representations under Sch 8 para 21 from publishing those representations: Sch 8 para 22(1). A person (the 'publisher') publishing any such material (whether under Sch 8 para 21 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 8 para 22(2).

17 As to the meaning of 'reserved legal activities' see PARA 512.

18 Legal Services Act 2007 Sch 8 para 21(2), (3). The Board must make rules governing the making of oral and written representations: Sch 8 para 21(5). Representations under Sch 8 para 21 must be made within the period of 28 days beginning with the day on which the advice is published under Sch 8 para 21(1) or such longer period as the Board may specify in a particular case: Sch 8 para 21(6).

19 Legal Services Act 2007 Sch 8 para 21(4).

20 Legal Services Act 2007 Sch 8 para 21(7). Before preparing the report, the Board must:

145 (1) give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations (Sch 8 para 21(8)(a)); and

146 (2) have regard to any comments duly made (Sch 8 para 21(8)(b)).

The Board must, as soon as practicable after the end of the period within which representations may be made under Sch 8 para 21, publish any written representations duly made and the report (if any) prepared under Sch 8 para 21(7): Sch 8 para 21(9).

UPDATE

403 Advice

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 Sch 8 paras 14-19, 21(1)-(4), (6)-(9), 22 is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 Sch 8 para 21(5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(vii) Intervention Directions/C. REVOCATION/404. Decision by the Board.

404. Decision by the Board.

As from a day to be appointed the following provisions have effect¹. After considering the application for revocation of a direction² and any accompanying material, any advice duly given³, any representations duly made⁴ and any other information which the Legal Services Board⁵ considers relevant to the application or notice⁶ the Board must decide whether to revoke the intervention direction in accordance with the application or notice⁷. The Board must give notice of its decision (the 'decision notice') to the approved regulator⁸ and must publish the decision notice⁹.

1 The Legal Services Act 2007 Sch 8 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 This applies to a case within the Legal Services Act 2007 Sch 8 para 13(1)(a) (see PARA 402).

3 Ie any advice given under the Legal Services Act 2007 Sch 8 paras 15-19 (see PARA 403).

4 Ie any representations made under the Legal Services Act 2007 Sch 8 para 21 (see PARA 403).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

6 As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 Sch 8 para 23(1).

8 Legal Services Act 2007 Sch 8 para 23(2). As to the meaning of 'approved regulator' see PARA 358. Where the Board decides to revoke the intervention direction, the decision notice must state the time the revocation is to take effect: Sch 8 para 23(3). Where the Board decides not to revoke the intervention direction, the decision notice must specify the reasons for that decision: Sch 8 para 23(4).

9 Legal Services Act 2007 Sch 8 para 23(5).

UPDATE

404 Decision by the Board

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(viii) Cancellation of Approval/405. Generally.

(viii) Cancellation of Approval

405. Generally.

As from a day to be appointed the following provisions have effect¹. The Lord Chancellor may by order cancel a body's designation as an approved regulator² in relation to all the reserved legal activities³ in relation to which it is an approved regulator or in relation to one or more, but not all, of those reserved legal activities, with effect from a date specified in the order⁴. But the Lord Chancellor may only make such an order in accordance with a recommendation made by the Legal Services Board⁵ under the following provisions⁶.

The Board must recommend that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities if the body applies to the Board for such a recommendation to be made⁷. The application must be made in such form and manner as may be prescribed by rules made by the Board and be accompanied by the prescribed fee⁸. The body must publish a notice giving details of the application in accordance with such requirements as may be specified in rules made by the Board⁹.

The Board may recommend that an order is made cancelling a body's designation as an approved regulator in relation to one or more reserved legal activities if it is satisfied that an act or omission of an approved regulator (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives and that it is appropriate to cancel the body's designation in relation to the activity or activities in question in all the circumstances of the case (including in particular the impact of cancelling the designation on the other regulatory objectives)¹⁰.

1 The Legal Services Act 2007 ss 45, 46, Sch 9 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358. Where an order has been made under the Legal Services Act 2007 s 62 cancelling the designation of the Legal Services Board as an approved regulator in relation to one or more reserved legal activities s 46 (other than s 46(2)(b)) applies: see s 65(1), (2); and PARA 367.

3 As to the meaning of 'reserved legal activities' see PARA 512.

4 Legal Services Act 2007 s 45(1). At the date at which this volume states the law no such order had been made. The following applies where a body (the 'former regulator') has its designation in relation to one or more reserved legal activities cancelled by an order under s 45: s 46(1). The Lord Chancellor may by order make such modifications of provisions made by or under any enactment (including the Legal Services Act 2007 or any enactment passed after that Act), prerogative instrument or other instrument or document and such transitional or consequential provision, as the Lord Chancellor considers necessary or expedient in consequence of the cancellation: s 46(2). The Board must prepare and issue a policy statement with respect to the exercise of its functions under s 45: see s 49(1)(d); and PARA 412. The powers of the Board under ss 45, 46 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

6 Legal Services Act 2007 s 45(2).

7 Legal Services Act 2007 s 45(3)(a).

8 Legal Services Act 2007 s 45(3)(b). For the purposes of the Legal Services Act 2007 s 45(3) 'prescribed fee', in relation to an application, means the fee specified in, or determined in accordance with, rules made by the Board, with the consent of the Lord Chancellor: s 45(4). Such rules are non-statutory and are not set out in this work. Any prescribed fee so received is payable into the Consolidated Fund: see s 175(1)(a), (2)(b). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

9 Legal Services Act 2007 s 45(3)(c). If the Lord Chancellor decides not to make an order in response to a recommendation made under s 45(3) or s 45(5), the Lord Chancellor must give the Board notice of the decision and the reasons for it: s 45(8). The Lord Chancellor must publish a notice given under s 45(8): s 45(9). As to notices generally see PARA 303 note 11.

10 Legal Services Act 2007 s 45(5). The Board may not determine that it is appropriate to cancel a body's designation in relation to an activity or activities unless it is satisfied that the matter cannot be adequately addressed by the Board exercising the powers available to it under ss 31-43: s 45(6). See note 9. Schedule 9 makes further provision about the making of recommendations under s 45(5): s 45(7), Sch 9 para 1. The Board may not make a recommendation under s 45(5) in respect of a body's designation as an approved regulator in relation to a reserved legal activity at any time when, by virtue of Sch 5 Pt 2 (protection of rights during a transitional period), any person is being treated as authorised by the body to carry on that activity: s 45(10).

UPDATE

405 Generally

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 45(1), (2), (3)(a), (5), (6), (8)-(10) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 s 45(3)(b), (c), (4), (7), Sch 9 para 1 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(viii) Cancellation of Approval/406. Notification of the approved regulator.

406. Notification of the approved regulator.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must give the approved regulator³ a notice (a 'warning notice') accompanied by a draft of the proposed recommendation⁴. The Board must publish a copy of the warning notice⁵. The approved regulator may make to the Board written representations and if the Board authorises it to do so, oral representations, about the proposed recommendation⁶. The Board must consider any representations duly made by the approved regulator⁷. Where oral representations are duly made, the Board must prepare a report of those representations⁸.

1 The Legal Services Act 2007 Sch 9 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 Sch 9 para 2(1). The warning notice must state that the Board proposes to make a recommendation under s 45(5) (see PARA 405) in the form of the accompanying draft and state the reasons why the Board is satisfied of the matters mentioned in s 45(5)(a), (b): Sch 9 para 2(2). As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 Sch 9 para 2(3).

6 Legal Services Act 2007 Sch 9 para 2(4). The Board must make rules governing the making of oral and written representations: Sch 9 para 2(5). Such rules are non-statutory and are not set out in this work. Representations under Sch 9 para 2 must be made within the period of 28 days beginning with the day on which the warning notice is given to the approved regulator or such longer period as the Board may specify in a particular case: Sch 9 para 2(6).

7 Legal Services Act 2007 Sch 9 para 2(7).

8 Legal Services Act 2007 Sch 9 para 2(8). Before preparing that report, the Board must give the approved regulator a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made: Sch 9 para 2(9).

UPDATE

406 Notification of the approved regulator

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 Sch 9 para 2(1)-(4), (6)-(9) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 Sch 9 para 2(5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(viii) Cancellation of Approval/407. Advice.

407. Advice.

As from a day to be appointed the following provisions have effect¹. After complying with the notification requirements² the Legal Services Board³ must give each of the persons listed below a copy of the warning notice and the accompanying draft, a copy of any written representations duly made by the approved regulator⁴ and a notice specifying a period within which any advice⁵ must be given⁶. Those persons are:

- 216 (1) the Office of Fair Trading⁷;
- 217 (2) the Consumer Panel⁸;
- 218 (3) the Lord Chief Justice⁹; and
- 219 (4) such other persons as the Board considers it reasonable to consult in respect of the proposed recommendations¹⁰.

The Board must give the approved regulator a copy of any advice duly given under heads (1) to (4) above¹¹ and publish that advice together with any written representations duly¹² made by the approved regulator and the report (if any)¹³.

The approved regulator and any body that represents persons authorised by the approved regulator to carry on activities which are reserved legal activities may make to the Board written representations and, if authorised to do so by the Board, oral representations, about the advice¹⁴. The Board may allow any other person to make written or oral representations about the advice¹⁵. Where oral representations are made the Board must prepare a report of those representations¹⁶.

1 The Legal Services Act 2007 Sch 9 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie after complying with the Legal Services Act 2007 Sch 9 para 2 (see PARA 406).

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 Ie written representations made under the Legal Services Act 2007 Sch 9 para 2 (see PARA 406). As to the meaning of 'approved regulator' see PARA 358.

5 Ie advice under the Legal Services Act 2007 Sch 9 paras 4-6. As to notices generally see PARA 303 note 11.

6 Legal Services Act 2007 Sch 9 para 3(1). A person (the 'consultee') to whom a copy of the warning notice is given under Sch 9 para 3(1) may, for the purposes of giving advice under Sch 9 paras 4-7, request the approved regulator or any other person to provide the consultee with such additional information as may be specified by the consultee: Sch 9 para 8.

7 Legal Services Act 2007 Sch 9 para 3(2)(a). The Office of Fair Trading must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made: Sch 9 para 4(1). In deciding what advice to give, the Office of Fair Trading must, in particular, have regard to whether making an order under s 45 (see PARA 405) in accordance with the proposed recommendation would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 9 para 4(2). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to the meaning of 'reserved legal services' see PARA 512 note 2.

8 Legal Services Act 2007 Sch 9 para 3(2)(b). The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made: Sch 9 para 5(1). In deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of making an order under s 45 (see PARA 405) in accordance with the proposed recommendation: Sch 9 para 5(2). As to the meaning of 'consumers' see PARA 302 note 8.

9 Legal Services Act 2007 Sch 9 para 3(2)(c). The Board must give the Lord Chief Justice a copy of any advice duly given under Sch 9 paras 4-6 and a notice specifying a period within which advice under Sch 9 para 7 must be given: Sch 9 para 7(1). The Lord Chief Justice must then give such advice as the Lord Chief Justice thinks fit in respect of the proposed recommendation: Sch 9 para 7(2). In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of making an order under s 45 (see PARA 405) in accordance with the proposed recommendation: Sch 9 para 7(3). As to the meaning of 'court' see PARA 302 note 13.

10 Legal Services Act 2007 Sch 9 para 3(2)(d). For the purposes of Sch 9, in relation to a proposed recommendation, 'selected consultee' means a person within Sch 9 para 3(2)(d): Sch 9 para 3(3). A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed recommendation: Sch 9 para 6.

11 Ie under the Legal Services Act 2007 Sch 9 paras 4-7.

12 Ie representations made under the Legal Services Act 2007 Sch 9 para 2 (see PARA 406).

13 Legal Services Act 2007 Sch 9 para 9(1).

14 Legal Services Act 2007 Sch 9 para 9(3), (4). As to the meaning of 'reserved legal activities' see PARA 512.

15 Legal Services Act 2007 Sch 9 para 9(5).

16 Legal Services Act 2007 Sch 9 para 9(7). Before preparing that report, the Board must give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations and have regard to any comments duly made: Sch 9 para 9(8). The Board must, as soon as reasonably practicable after the end of the period within which representations under Sch 9 para 9 may be made, publish any written representations duly made and the report (if any) prepared under Sch 9 para 9(7): Sch 9 para 9(9). Nothing in Sch 9 para 9 operates to prevent a person who gives advice under Sch 9 paras 4-7 from publishing that advice or to prevent a person who makes representations under Sch 9 para 2 (see PARA 406) or Sch 9 para 9 from publishing those representations: Sch 9 para 10(1). A person (the 'publisher') publishing any such material (whether under Sch 9 para 9 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 9 para 10(2).

UPDATE

407 Advice

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 Sch 9 paras 9(1)-(4), (6)-(9), 10 is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 Sch 9 para 9(5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(viii) Cancellation of Approval/408. Decision.

408. Decision.

As from a day to be appointed the following provisions have effect¹. After considering any advice duly given², any representations duly made³ and any other information which the Legal Services Board⁴ considers relevant, the Board must decide whether to make the proposed recommendation⁵. The Board must give notice of its decision (the 'decision notice') to the approved regulator⁶ and to the Lord Chancellor⁷. The Board must publish the decision notice⁸.

1 The Legal Services Act 2007 Sch 9 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie any advice given under the Legal Services Act 2007 Sch 9 paras 4-7 (see PARA 407).

3 Ie any representations made under Sch 9 para 2 (see PARA 406) or Sch 9 para 9 (see PARA 407).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 9 para 11(1).

6 As to the meaning of 'approved regulator' see PARA 358. As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 Sch 9 para 11(2). If the Board decides to make the proposed recommendation, the decision notice must contain the recommendation and state why the Board is satisfied of the matters mentioned in s 45(5)(a), (b) (see PARA 405): Sch 9 para 11(3).

8 Legal Services Act 2007 Sch 9 para 11(4).

UPDATE

408-410 Decision ... Board's power to recommend order for transfer arrangements

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(viii) Cancellation of Approval/409. Transfer arrangements.

409. Transfer arrangements.

As from a day to be appointed the following provisions have effect¹. Where a body (the 'former regulator') has its designation in relation to one or more reserved legal activities cancelled by order² the Lord Chancellor may by order make transfer arrangements³. The transfer arrangements:

- 220 (1) must make such provision as is necessary to ensure that, where a person is treated under those arrangements as being authorised to carry on a protected activity by the new regulator, that person is subject to the regulatory arrangements of the new regulator⁴;
- 221 (2) may make provision requiring amounts held by the former regulator which represent amounts paid to it by way of practising fees⁵ by the persons to whom the transfer arrangements apply (or a part of the amounts so held) to be paid to the new regulator and treated as if they were amounts paid by those persons by way of practising fees to the new regulator⁶.

1 The Legal Services Act 2007 s 46 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Is cancelled by order under the Legal Services Act 2007 s 45 (see PARA 405). As to the meaning of 'reserved legal activities' see PARA 512. Where the Legal Services Board has its designation as an approved regulator cancelled in relation to one or more reserved legal activities s 46 (other than s 46(4)(b)) applies: see s 65(1), (2); and PARA 367.

3 Legal Services Act 2007 s 46(1), (3). 'Transfer arrangements' are arrangements in accordance with which each person authorised by the former regulator who consents to the arrangements is, from the time the cancellation takes effect, treated as being authorised to carry on each protected activity by either a relevant approved regulator, in relation to the protected activity, who consents to the transfer arrangements or the Board acting in its capacity as a relevant approved regulator in relation to the protected activity by virtue of an order made under s 62: s 46(4). The Lord Chancellor may make an order under s 46 only if the Board has made a recommendation in accordance with s 47 and the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation: s 46(7). A person is 'authorised by the former regulator' if immediately before the time the cancellation takes effect the person is authorised by the former regulator (other than by virtue of a licence under Pt 5) to carry on an activity which is a reserved legal activity to which the cancellation relates and in relation to that person the activity which that person is authorised to carry on is a 'protected activity' and 'new regulator' means the approved regulator within s 46(4) (a) or s 46(4)(b): s 46(8). As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 s 46(5)(a). Section 46(5)(a) is subject to any transitional provision which may be made by the transfer arrangements, including provision modifying the regulatory arrangements of the new regulator as they apply to persons to whom the transfer arrangements apply: s 46(6). As to the meaning of 'regulatory arrangements' see PARA 377.

5 For this purpose 'practising fee', in relation to an approved regulator, means a fee payable by a person under the approved regulator's regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities: Legal Services Act 2007 s 46(9). However, 'practising fee' does not include a fee payable by a licensed body to its licensing authority under licensing rules: s 46(10). As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

6 Legal Services Act 2007 s 46(5)(b).

UPDATE

408-410 Decision ... Board's power to recommend order for transfer arrangements

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(viii) Cancellation of Approval/410. Board's power to recommend order for transfer arrangements.

410. Board's power to recommend order for transfer arrangements.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may recommend to the Lord Chancellor that the Lord Chancellor make an order making transfer arrangements³ in the form of a draft order prepared by the Board and annexed to the recommendation⁴. Before making such a recommendation the Board must publish a draft of the proposed recommendation and the proposed draft order⁵. The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period⁶. Before making the recommendation the Board must have regard to any representations duly made⁷.

1 The Legal Services Act 2007 s 47 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 He make an order under the Legal Services Act 2007 s 46 (see PARA 409). Where the Legal Services Board has its designation as an approved regulator cancelled in relation to one or more reserved legal activities s 47 applies: see s 65(1), (2); and PARA 367.

4 Legal Services Act 2007 s 47(1). The powers of the Board under s 47 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7. As to the meaning of 'approved regulator' see PARA 358.

5 Legal Services Act 2007 s 47(2). If the draft order to be annexed to the recommendation differs from the proposed draft in a way which in the opinion of the Board is material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes: s 47(5).

6 Legal Services Act 2007 s 47(3). As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 s 47(4).

UPDATE

408-410 Decision ... Board's power to recommend order for transfer arrangements

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(viii) Cancellation of Approval/411. Powers of entry.

411. Powers of entry.

As from a day to be appointed the following provisions have effect¹. Where a body (the 'former regulator') has its designation in relation to one or more reserved legal activities² cancelled by order³ the Legal Services Board⁴ may request the former regulator to provide assistance to the new regulator⁵ and the Board, for the purpose of continuing regulation⁶. On an application by a person appointed by the Board to act on its behalf, a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising that person to enter and search the premises of the former regulator and take possession of any written or electronic records found on the premises⁷. A person so authorised may, for the purpose of continuing regulation, take copies of written or electronic records found on a search carried out by virtue of the warrant⁸. The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the purpose of continuing regulation⁹.

1 The Legal Services Act 2007 s 48 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activities' see PARA 512.

3 By order under the Legal Services Act 2007 s 45 (see PARA 405).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 As to the meaning of 'new regulator' see the Legal Services Act 2007 s 46; and PARA 409 (definition applied by s 48(10)).

6 Legal Services Act 2007 s 48(1), (2). 'The purpose of continuing regulation' means the purpose of enabling persons authorised by the former regulator to continue to be authorised and regulated in relation to the protected activity: s 48(10). The powers of the Board under s 48 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7. As to the meaning of 'approved regulator' see PARA 358.

7 Legal Services Act 2007 s 48(3). The Board must make rules as to the persons it may appoint for the purposes of s 48(3): s 48(9). Such rules are non-statutory and are not set out in this work.

8 Legal Services Act 2007 s 48(4).

9 Legal Services Act 2007 s 48(5). The Lord Chancellor must make regulations:

147 (1) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant (s 48(6)(a)); and

148 (2) regulating the exercise of a power conferred by a warrant issued under s 48(3) or by s 48(4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise) (s 48(6)(b)).

Regulations under s 48(6)(b) must in particular make provision as to circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under s 48(3) may be copied or must be returned: s 48(7).

But the Lord Chancellor may not make regulations under s 48(6) unless they are made in accordance with a recommendation made by the Board or the Lord Chancellor has consulted the Board about the making of the regulations: s 48(8).

At the date at which this volume states the law no such regulations had been made.

UPDATE

411 Powers of entry

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 48(1)-(5), (1) is 1 January 2010: SI 2009/3250. Day appointed in relation to Legal Services Act 2007 s 48(6)-(9) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(ix) Policy Statements/412. Issuing of policy statements.

(ix) Policy Statements

412. Issuing of policy statements.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must prepare and issue a statement of policy³ with respect to the exercise of its functions in relation to:

- 222 (1) performance targets and monitoring⁴;
- 223 (2) directions⁵;
- 224 (3) public censure⁶;
- 225 (4) financial penalties⁷;
- 226 (5) intervention directions⁸;
- 227 (6) the cancellation of designation as approved regulator⁹;
- 228 (7) the cancellation of designation as licensing authority by order¹⁰.

The Board may prepare and issue a statement of policy with respect to any other matter¹¹. In preparing a statement of policy, the Board must have regard to the principle that its principal role is the oversight of approved regulators¹². In exercising or deciding whether to exercise any of its functions the Board must have regard to any relevant policy statement published¹³.

1 The Legal Services Act 2007 s 49 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 The statement of policy prepared under the Legal Services Act 2007 s 49(1) must:

- 149 (1) take account of the desirability of resolving informally matters which arise between the Board and an approved regulator (s 49(4)(a)); and
- 150 (2) specify how, in exercising its functions as mentioned in heads (1)-(7) in the text the Board will comply with the requirements of s 3(3) (regulatory activities to be proportionate, consistent and targeted only at cases in which action is needed, etc) (see PARA 311) (s 49(4)(b)),

and, in preparing that statement, the Board must have regard to the principle that the Board should not exercise any of those functions by reason of an act or omission of an approved regulator unless the act or omission was unreasonable: s 49(4).

The Board may at any time alter or replace any statement issued under s 49: s 49(6). If a statement is altered or replaced, the Board must issue the altered or replacement statement: s 49(7). The Board must publish a statement issued under s 49 and may make a reasonable charge for providing a person with a copy of a statement: s 49(9), (10). Any sum so received is payable into the Consolidated Fund: see s 175(1)(c). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031. As to the procedure for the issuing of a policy statement see s 50; and PARA 413. As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 s 49(1)(a). As to performance targets and monitoring see the Legal Services Act 2007 s 31; and PARA 387. The powers of the Board under s 49 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

5 Legal Services Act 2007 s 49(1)(b). As to directions see the Legal Services Act 2007 s 32; and PARA 388.

6 Legal Services Act 2007 s 49(1)(c). As to public censure see the Legal Services Act 2007 s 35; and PARA 393.

7 Legal Services Act 2007 s 49(1)(d). As to financial penalties see the Legal Services Act 2007 s 37; and PARA 394. The Board's policy in determining what the amount of a penalty under s 37 should be must include having regard to the seriousness of the failure in question and the extent to which it was deliberate or reckless: s 49(5).

8 Legal Services Act 2007 s 49(1)(e). As to intervention directions see the Legal Services Act 2007 s 41; and PARA 397.

9 Legal Services Act 2007 s 49(1)(f). As to the cancellation of the designation as an approved regulator see the Legal Services Act 2007 s 45; and PARA 405.

10 Legal Services Act 2007 s 49(1)(g). As to the cancellation of the designation as a licensing authority by order see s 76; and PARAS 1486-1488. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

11 Legal Services Act 2007 s 49(2).

12 Legal Services Act 2007 s 49(3).

13 Legal Services Act 2007 s 49(8).

UPDATE

412-413 Policy Statements

These provisions have effect as from 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(ix) Policy Statements/413. Procedure for the issuing of policy statements.

413. Procedure for the issuing of policy statements.

As from a day to be appointed the following provisions have effect¹. Before issuing a policy statement², the Legal Services Board³ must publish a draft of the proposed statement⁴. The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period⁵. Before issuing the statement, the Board must have regard to any representations duly made⁶. If the statement differs from the draft published⁷ in a way which is, in the opinion of the Board, material, the Board must publish details of the differences⁸.

1 The Legal Services Act 2007 s 50 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie a statement under the Legal Services Act 2007 s 49 (see PARA 412).

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 Legal Services Act 2007 s 50(1). The Board may make a reasonable charge for providing a person with a copy of a draft published under s 50(1): s 50(5). Any sum so received is payable into the Consolidated Fund: see s 175(1)(c). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031. The powers of the Board under s 50 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7. As to the meaning of 'approved regulator' see PARA 358.

5 Legal Services Act 2007 s 50(2). As to notices generally see PARA 303 note 11.

6 Legal Services Act 2007 s 50(3).

7 Ie the draft published under the Legal Services Act s 50(1).

8 Legal Services Act 2007 s 50(4).

UPDATE

412-413 Policy Statements

These provisions have effect as from 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(x) Practising Fees/414. Practising fees.

(x) Practising Fees

414. Practising fees.

As from a day to be appointed the following provisions have effect¹. An approved regulator² may only apply amounts raised by practising fees³ for one or more of the permitted purposes⁴. The Legal Services Board⁵ must make rules specifying the permitted purposes⁶.

Those rules must, in particular, provide that the following are permitted purposes:

- 229 (1) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including the maintaining and raising of their professional standards and the giving of practical support and advice about practice management, in relation to practices carried on by such persons⁷;
- 230 (2) the payment of a levy imposed⁸ on the approved regulator⁹;
- 231 (3) the participation by the approved regulator in law reform and the legislative process¹⁰;
- 232 (4) the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge¹¹;
- 233 (5) the promotion of the protection by law of human rights and fundamental freedoms¹²;
- 234 (6) the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions¹³.

A practising fee is payable under the regulatory arrangements of an approved regulator only if the Board has approved the level of the fee¹⁴.

1 The Legal Services Act 2007 s 51 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358.

3 For this purpose 'practising fee', in relation to an approved regulator, means a fee payable by a person under the approved regulator's regulatory arrangements in circumstances where the payment of the fee is a condition which must be satisfied for that person to be authorised by the approved regulator to carry on one or more activities which are reserved legal activities: Legal Services Act 2007 s 51(1). As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'reserved legal activities' see PARA 512. The powers of the Board under s 51 are not exercisable by the Board as an approved regulator: see s 67(1); and PARA 358 note 7.

4 Legal Services Act 2007 s 51(2).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

6 Legal Services Act 2007 s 51(3).

7 Legal Services Act 2007 s 51(4)(a). For the purposes of s 51 'relevant authorised persons', in relation to an approved regulator, means persons who are authorised by the approved regulator to carry on activities which are reserved legal activities: s 51(8).

8 le a levy imposed under the Legal Services Act 2007 s 173 (see PARA 316).

9 Legal Services Act 2007 s 51(4)(b).

10 Legal Services Act 2007 s 51(4)(c).

11 Legal Services Act 2007 s 51(4)(d). As to the meaning of 'reserved legal services' see PARA 512 note 2.

12 Legal Services Act 2007 s 51(4)(e).

13 Legal Services Act 2007 s 51(4)(f).

14 Legal Services Act 2007 s 51(5). The Board must make rules containing provision:

151 (1) about the form and manner in which applications for approval for the purposes of s 51(5) must be made and the material which must accompany such applications (s 51(6)(a));

152 (2) requiring applicants to have consulted such persons as may be prescribed by the rules in such manner as may be so prescribed before such an application is made (s 51(6)(b));

153 (3) about the procedures and criteria that will be applied by the Board when determining whether to approve the level of a fee for the purposes of s 51(5) (s 51(6)(c)).

Rules under head (3) above must, in particular, contain:

154 (a) provision requiring the Board, before it determines an application for approval of the level of a fee, to consult such persons as it considers appropriate about the impact of the proposed fee on persons providing non-commercial legal services (s 51(7)(a));

155 (b) provision about the time limit for the determining of an application (s 51(7)(b)). As to the meaning of 'non-commercial legal services' see PARA 305 note 21.

UPDATE

414 Practising fees

TEXT AND NOTES--Day appointed in relation to Legal Services Act 2007 s 51(1), (3), (4), (6)-(8) is 1 January 2009: SI 2008/3149. Day appointed in relation to Legal Services Act 2007 s 51(2), (5) is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xi) Regulatory Conflict/415. Requirement to make provision preventing regulatory conflict.

(xi) Regulatory Conflict

415. Requirement to make provision preventing regulatory conflict.

As from a day to be appointed the following provisions have effect¹. The regulatory arrangements of an approved regulator² must make such provision as is reasonably practicable to prevent regulatory conflicts³.

Where a body is authorised by an approved regulator (the 'entity regulator') to carry on an activity which is a reserved legal activity⁴ the following applies⁵. If a conflict arises between:

- 235 (1) a requirement of the regulatory arrangements of the entity regulator, in relation to the body authorised by the entity regulator or an employee or manager of the body (an 'entity requirement')⁶; and
- 236 (2) a requirement of the regulatory arrangements of another approved regulator in relation to an employee or manager of the body who is authorised by it to carry on a reserved legal activity (an 'individual requirement')⁷,

the entity requirement prevails over the individual requirement⁸.

1 The Legal Services Act 2007 s 52 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'approved regulator' see PARA 358.

3 Legal Services Act 2007 s 52(1). For the purposes of s 52 and s 53 (see PARA 416), a regulatory conflict is a conflict between a requirement of the approved regulator's regulatory arrangements and a requirement of the regulatory arrangements of another approved regulator: s 52(2). Sections 52-54 also apply in relation to the Legal Services Board in its capacity as a licensing authority and its licensing rules: see s 103(1); and PARA 1478. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

4 As to the meaning of 'reserved legal activity' see PARA 512.

5 Legal Services Act 2007 s 52(3).

6 Legal Services Act 2007 s 52(4)(a). As to the meaning of 'manager' see PARA 369 note 17.

7 Legal Services Act 2007 s 52(4)(b).

8 Legal Services Act 2007 s 52(4).

UPDATE

415-422 Requirement to make provision preventing regulatory conflict ... Duties of the Competition Commission

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xi) Regulatory Conflict/416. Applications by another approved regulator.

416. Applications by another approved regulator.

As from a day to be appointed the following provisions have effect¹. If an approved regulator (the 'applicant regulator') considers that the regulatory arrangements² of another approved regulator (the 'conflicting regulator') do not make appropriate provision to prevent a regulatory conflict³ the applicant regulator may make an application to the Legal Services Board⁴ for the Board to exercise its powers⁵ to direct the conflicting regulator:

- 237 (1) to take steps to modify, in such manner as may be specified in the direction, the provision made by its regulatory arrangements to prevent a regulatory conflict with the applicant regulator⁶; or
- 238 (2) if its regulatory arrangements do not make any such provision, to make such provision as may be specified in the direction to prevent such a conflict⁷.

Where an application is made the Board must give the applicant regulator and the conflicting regulator an opportunity to make representations and may consult any persons it considers appropriate⁸. The Board must consider whether or not to make a warning notice⁹ in response to the application¹⁰.

1 The Legal Services Act 2007 s 53 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'approved regulator' see PARA 358. An approved regulator must consider any request made by an affected person for the approved regulator to reconsider the provision made by its regulatory arrangements to prevent a regulatory conflict with another approved regulator or for the approved regulator to make an application under s 53: s 53(3). 'Affected person', in relation to an approved regulator, means:

156 (1) a person authorised by the approved regulator to carry on a reserved legal activity (s 53(4)(a));

157 (2) an employee or manager of such a person (s 53(4)(b)).

As to the meaning of 'manager' see PARA 369 note 17.

3 As to the meaning of 'regulatory conflict' see PARA 415 note 3.

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. References in s 53 to an approved regulator do not include the Board in its capacity as an approved regulator: s 67(2).

5 Its powers under the Legal Services Act 2007 s 32 (see PARA 388).

6 Legal Services Act 2007 s 53(1), (2)(a). Sections 52-54 also apply in relation to the Legal Services Board in its capacity as a licensing authority and its licensing rules: see s 103(1); and PARA 1478.

7 Legal Services Act 2007 s 53(1), (2)(b).

8 Legal Services Act 2007 s 53(5). As to the application of s 53(5)-(8) in relation to an application to the Legal Services Board as an approved regulator see s 68(10); and PARA 371.

9 For the purposes of the Legal Services Act 2007 s 53 'warning notice' means a notice given under Sch 7 para 2(1) (see PARA 389): s 53(9). The Board must make that decision before the end of the period of 6 months

beginning with the day on which the application is received by it: s 53(7). The Board must give notice of its decision, and the reasons for it, to the applicant regulator and the conflicting regulator: s 53(8). As to notices generally see PARA 303 note 11.

10 Legal Services Act 2007 s 53(6).

UPDATE

415-422 Requirement to make provision preventing regulatory conflict ... Duties of the Competition Commission

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xi) Regulatory Conflict/417. Regulatory conflict with other regulatory regimes.

417. Regulatory conflict with other regulatory regimes.

As from a day to be appointed the following provisions have effect¹. The regulatory arrangements of an approved regulator² must make such provision as is reasonably practicable and, in all the circumstances, appropriate:

- 239 (1) to prevent external regulatory conflicts³;
- 240 (2) to provide for the resolution of any external regulatory conflicts which arise⁴; and
- 241 (3) to prevent unnecessary duplication of regulatory provisions made by an external regulatory body⁵.

1 The Legal Services Act 2007 s 54 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'approved regulator' see PARA 358.

3 Legal Services Act 2007 s 54(1)(a). For the purposes of s 54, an external regulatory conflict is a conflict between a requirement of the regulatory arrangements of the approved regulator and a requirement of any regulatory provision made by an external regulatory body: s 54(2). For the purposes of s 54 'external regulatory body' means a person (other than an approved regulator) who exercises regulatory functions in relation to a particular description of persons with a view to ensuring compliance with rules (whether statutory or non-statutory) by those persons: s 54(3). Sections 52-54 also apply in relation to the Legal Services Board in its capacity as a licensing authority and its licensing rules: see s 103(1); and PARA 1478.

4 Legal Services Act 2007 s 54(1)(b). Regulatory arrangements made for the purposes of s 54(1)(b) may, with the consent of the Legal Services Board, provide for the Board to exercise functions in connection with the resolution of conflicts: s 54(4). As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 s 54(1)(c).

UPDATE

415-422 Requirement to make provision preventing regulatory conflict ... Duties of the Competition Commission

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xii) Competition/418. Reports by the Office of Fair Trading.

(xii) Competition

418. Reports by the Office of Fair Trading.

As from a day to be appointed the following provisions have effect¹. If the Office of Fair Trading is of the opinion that the regulatory arrangements of an approved regulator² (or any part of them) prevent, restrict or distort competition within the market for reserved legal services³ to any significant extent, or are likely to do so, the Office of Fair Trading may prepare a report to that effect⁴. Such a report must state what, in the Office of Fair Trading's opinion, is the effect or likely effect on competition of the regulatory arrangements or part of them to which the report relates⁵. The report may also contain recommendations as to the action which the Legal Services Board⁶ should take for the purpose of ensuring that the regulatory arrangements of the approved regulator do not prevent, restrict or distort competition⁷.

Where the Office of Fair Trading makes a report it must give a copy of the report to the Board, the Consumer Panel⁸ and the approved regulator and publish the report⁹.

However before publishing the report the Office of Fair Trading must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the Office of Fair Trading, would or might seriously and prejudicially affect the interests of that individual¹⁰.

1 The Legal Services Act 2007 s 57 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'approved regulator' see PARA 358. As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

3 As to the meaning of 'reserved legal services' see PARA 512 note 2.

4 Legal Services Act 2007 s 57(1). The Office of Fair Trading may exercise any of the powers conferred on it by the Enterprise Act 2002 s 174(3)-(5) (investigation powers (see **COMPETITION** vol 18 (2009) PARA 314)) for the purpose of assisting it in exercising its functions under s 57: Legal Services Act 2007 s 57(5). For the purposes of the law of defamation, absolute privilege attaches to any report of the Office of Fair Trading under s 57: s 57(6).

5 Legal Services Act 2007 s 57(2)(a).

6 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. Section 57 does not apply to the Board in its capacity as an approved regulator: see s 67(3); and PARA 358 note 7.

7 Legal Services Act 2007 s 57(2)(b).

8 As to the Consumer Panel see PARAS 323-326.

9 Legal Services Act 2007 s 57(3).

10 Legal Services Act 2007 s 57(4).

UPDATE

**415-422 Requirement to make provision preventing regulatory conflict ...
Duties of the Competition Commission**

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xii) Competition/419. The Board's response to the report.

419. The Board's response to the report.

As from a day to be appointed the following provisions have effect¹. Where a report is made by the Office of Fair Trading² in respect of an approved regulator³ the Legal Services Board⁴ must allow the approved regulator a period of 28 days beginning with the day on which the copy of the report is given to the approved regulator or such longer period as the Board may specify in a particular case, to make representations to the Board about the Office of Fair Trading's report⁵. The Consumer Panel⁶ may give the Board such advice as the Consumer Panel thinks fit regarding the Office of Fair Trading's report⁷.

1 The Legal Services Act 2007 s 58 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 See under the Legal Services Act 2007 s 57 (see PARA 418). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

3 As to the meaning of 'approved regulator' see PARA 358.

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. Section 58 does not apply to the Board in its capacity as an approved regulator: see s 67(3); and PARA 358 note 7.

5 Legal Services Act 2007 s 58(1), (2). Having considered any representations so made and any advice given under s 58(3) (see text and notes 6, 7), the Board must notify the Office of Fair Trading of the action (if any) it proposes to take in response to the report: s 58(4).

6 As to the Consumer Panel see PARAS 323-326.

7 Legal Services Act 2007 s 58(3).

UPDATE

415-422 Requirement to make provision preventing regulatory conflict ... Duties of the Competition Commission

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xii) Competition/420. Directions by the Lord Chancellor.

420. Directions by the Lord Chancellor.

As from a day to be appointed the following provisions have effect¹. The Lord Chancellor may direct the Legal Services Board² to take such action as the Lord Chancellor considers appropriate in connection with any matter raised in a report³ made by the Office of Fair Trading⁴. However before giving such a direction the Lord Chancellor must consider any report from the Competition Commission⁵ on that matter⁶.

When exercising the power to give a direction the Lord Chancellor must ensure that the action stated is action which the Board has power to take and, so far as reasonably possible, that the action stated in any direction is compatible with the functions conferred, and obligations imposed, on the Board by or under the Legal Services Act 2007⁷.

1 The Legal Services Act 2007 s 61 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. Section 61 does not apply to the Board in its capacity as an approved regulator: see s 67(3); and PARA 358 note 7. As to the meaning of 'approved regulator' see PARA 358.

3 Ie a report under the Legal Services Act 2007 s 57 (see PARA 418).

4 Legal Services Act 2007 s 61(1). The Lord Chancellor must publish a direction given under s 61: s 61(4). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

5 Ie a report under the Legal Services Act 2007 s 60 (see PARA 422). As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq.

6 Legal Services Act 2007 s 61(1).

7 Legal Services Act 2007 s 61(3).

UPDATE

415-422 Requirement to make provision preventing regulatory conflict ... Duties of the Competition Commission

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xii) Competition/421. Referral of report by the Lord Chancellor to the Competition Commission.

421. Referral of report by the Lord Chancellor to the Competition Commission.

As from a day to be appointed the following provisions have effect¹. Where the Office of Fair Trading is satisfied that the Legal Services Board² has failed to give full and proper consideration to a report³ made by the Office of Fair Trading, in respect of an approved regulator the Office of Fair Trading may give a copy of its report to the Lord Chancellor⁴.

On receiving the report the Lord Chancellor must give the Competition Commission a copy of the report and seek its advice on what action (if any) should be taken⁵ by the Lord Chancellor⁶.

1 The Legal Services Act 2007s 59 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. Section 59 does not apply to the Board in its capacity as an approved regulator: see s 67(3); and PARA 358 note 7. As to the meaning of 'approved regulator' see PARA 358.

3 I.e a report under the Legal Services Act 2007 s 57 (see PARA 418).

4 Legal Services Act 2007 s 59(1), (2). The Office of Fair Trading must notify the Board and the approved regulator if it gives a copy of its report to the Lord Chancellor: s 59(3).

5 I.e action under the Legal Services Act 2007 s 61 (see PARA 420). As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq.

6 Legal Services Act 2007 s 59(4).

UPDATE

415-422 Requirement to make provision preventing regulatory conflict ... Duties of the Competition Commission

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(5) APPROVED REGULATORS UNDER THE LEGAL SERVICES ACT 2007/(xii) Competition/422. Duties of the Competition Commission.

422. Duties of the Competition Commission.

As from a day to be appointed the following provisions have effect¹. Where the Lord Chancellor seeks the advice of the Competition Commission², the Commission must investigate the matter³. The Commission must then make its own report on the matter unless it considers that, as a result of any change of circumstances, no useful purpose would be served by a report⁴. If the Commission consequently decides not to make a report, it must make a statement setting out the change of circumstances which resulted in that decision⁵.

A report made under the above provisions must state the Commission's conclusion as to whether any of the matters which is the subject of the report has or is likely to have the effect of preventing, restricting or distorting competition within the market for reserved legal services⁶ to a significant extent⁷. A report stating the Commission's conclusion that there is, or is likely to be, such an effect must also state whether or not the Commission considers that that effect is justified and if it states that the Commission considers that it is not justified, state its conclusion as to what action, if any, ought to be taken by the Legal Services Board⁸.

A report under the above provisions must also contain such an account of the Commission's reasons for its conclusions as is expedient, in the opinion of the Commission, for facilitating proper understanding of them⁹.

1 The Legal Services Act 2007 s 60 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 See under the Legal Services Act 2007 s 59 (see PARA 421). As to the Competition Commission see **COMPETITION** vol 18 (2009) PARA 9 et seq.

3 Legal Services Act 2007 s 60(1). Section 60 does not apply to the Board in its capacity as an approved regulator: see s 67(3); and PARA 358 note 7. As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 s 60(2). The Commission must comply with s 60(2) or s 60(3) within the period of three months beginning with the day on which it receives a copy of the Office of Fair Trading's report under s 59(4)(a) (see PARA 421): s 60(4). If the Commission makes a report or a statement under s 60 it must give a copy to the Lord Chancellor, the Board, the Consumer Panel and the approved regulator to which the Office of Fair Trading's report relates and publish the report or statement: s 60(10). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

5 Legal Services Act 2007 s 60(3). The Enterprise Act 2002 ss 109-115 (investigation powers) (see **COMPETITION** vol 18 (2009) PARAS 259-264) apply in relation to an investigation under the Legal Services Act 2007 s 60 as they apply in relation to an investigation made on a reference made to the Commission under the Enterprise Act 2002 Pt 3 (mergers), but as if (1) in s 110(4), the reference to the publication of the report of the Commission on the reference concerned were a reference to the Commission making a report under s 110(2) or a statement under s 110(3); and (2) in s 111(5)(b)(ii) the day referred to were the day on which the Commission makes that report or statement: Legal Services Act 2007 s 60(9).

6 As to the meaning of 'reserved legal services' see PARA 512 note 2.

7 Legal Services Act 2007 s 60(5).

8 Legal Services Act 2007 s 60(6). As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. When determining any such action to be taken by the Board, the Commission must ensure that the action stated is action which the Board has power to take and so far as reasonably possible, that the action

stated is compatible with the functions conferred, and obligations imposed, on the Board by or under the Legal Services Act 2007: s 60(7).

9 Legal Services Act 2007 s 60(8).

UPDATE

415-422 Requirement to make provision preventing regulatory conflict ... Duties of the Competition Commission

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(i) Introduction/423. General introduction.

(6) COMPLAINTS AND DISCIPLINE

(i) Introduction

423. General introduction.

As from a day to be appointed the following provisions have effect¹. The offices of the Legal Services Complaints Commissioner² and the Legal Services Ombudsman³ are abolished⁴ and accordingly the provisions relating to those offices⁵ are repealed⁶.

A new scheme is introduced by the Legal Services Act 2007 to be administered by a new body called the Office for Legal Complaints⁷.

1 The Legal Services Act 2007 s 159 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 See PARA 435 et seq.

3 See PARA 424 et seq.

4 Legal Services Act 2007 s 159(1).

5 In the Access to Justice Act 1999 ss 51, 52, Sch 8 (see PARA 435 et seq) and the Courts and Legal Services Act 1990 ss 21-26, Sch 3 (see PARA 424 et seq).

6 See the Legal Services Act 2007 s 159(2).

7 See the Legal Services Act 2007 ss 113, 115; and PARA 465. As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442 et seq.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(ii) The Legal Services Ombudsman/424. Appointment.

(ii) The Legal Services Ombudsman

424. Appointment.

Until a day to be appointed the following provisions have effect¹. The Secretary of State is empowered to appoint a Legal Services Ombudsman whose appointment is for a period of not more than three years, renewable at the end of the term². He must not be an authorised advocate³, authorised litigator⁴, licensed conveyancer⁵, authorised practitioner⁶, or notary⁷.

The Secretary of State must pay to, or in respect of, the Ombudsman, such amounts by way of remuneration, pensions, allowances or gratuities or by way of provision for any such benefits as he may determine⁸. In certain circumstances⁹ he may appoint an acting Ombudsman and may pay to any person so appointed such remuneration as he may determine¹⁰.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 s 21(2), (3)(a), (4) (prospectively repealed: see note 1). The appointment is made for the purpose of conducting investigations under the Courts and Legal Services Act 1990: s 21(1) (as so prospectively repealed; amended by SI 2003/1887). The Ombudsman must hold and vacate office in accordance with the terms of his appointment: s 21(3)(b) (as so prospectively repealed). The Legal Services Complaints Commissioner is disqualified for membership of the House of Commons and the Northern Ireland Assembly: see the House of Commons Disqualification Act 1975 Sch 1 Pt III and the Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt III (both entries prospectively repealed by the Legal Services Act 2007 Sch 23).

3 As to the meaning of 'authorised advocate' see PARA 497 note 7.

4 As to the meaning of 'authorised litigator' see PARA 498 note 6.

5 As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11; and PARA 1319 note 3 (definition applied by the Courts and Legal Services Act 1990 s 119(1)).

6 As to the meaning of 'authorised practitioner' see the Courts and Legal Services Act 1990 s 37 (not yet in force and prospectively repealed) (ie a person authorised by the Authorised Practitioners Conveyancing Board to provide conveyancing services) (definition applied by s 119(1) (application of definition prospectively repealed by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (2), Sch 23)). At the date at which this volume states the law, s 37 had not been brought in force. As to the meaning of 'conveyancing services' see PARA 495 note 5. See further PARA 1319.

7 Courts and Legal Services Act 1990 s 21(5) (as prospectively repealed: see note 1).

8 Courts and Legal Services Act 1990 Sch 3 para 3(1) (as prospectively repealed (see note 1); amended by the Access to Justice Act 1999 Sch 15 Pt II and SI 2003/1887). If the Ombudsman ceases to hold office, and it appears to the Lord Chancellor that there are special circumstances which make it right that he should receive compensation, the Lord Chancellor may pay to him such sum as he may determine with the consent of the Treasury: Courts and Legal Services Act 1990 Sch 3 para 3(2) (as so prospectively repealed; amended by the Access to Justice Act 1999 Sch 15 Pt II and SI 2003/1887).

9 Ie where:

158 (1) the Ombudsman's office becomes vacant (Courts and Legal Services Act 1990 Sch 3 para 9(1)(a) (prospectively repealed (see note 1); amended by SI 2003/1887)); or

- 159 (2) the Ombudsman is incapable of exercising his functions, or considers that it would be inappropriate for him to exercise any of them in connection with a particular matter, because of a possible conflict of interests or for any other reason (Courts and Legal Services Act 1990 Sch 3 para 9(1)(b) (as so prospectively repealed)).

10 See the Courts and Legal Services Act 1990 Sch 3 para 9(2), (3) (prospectively repealed (see note 1); amended by Access to Justice Act 1999 Sch 15 Pt II and SI 2003/1887).

UPDATE

424-427 Appointment ... Extension of jurisdiction in relation to probate

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

424 Appointment

NOTE 2--House of Commons Disqualification Act 1975 Sch 1 Pt III amended: SI 2009/1941.

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425. When the Ombudsman may investigate.

Until a day to be appointed the following provisions have effect¹. The Legal Services Ombudsman² may investigate any allegation which is properly made³ to him relating to the manner in which a complaint made to a professional body⁴ with respect to:

- 242 (1) a person who is or was an authorised advocate⁵, authorised litigator⁶, licensed conveyancer⁷, registered foreign lawyer⁸, recognised body⁹ or duly certificated notary public¹⁰ and a member of that professional body¹¹; or
- 243 (2) any employee of such a person¹²,

has been dealt with by that professional body¹³.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Ombudsman see PARA 424.

3 An allegation is properly made if it is made in writing and by any person affected by what is alleged in relation to the complaint concerned, or, where that person has died or is unable to act for himself, by his personal representative or any relative or other representative of his: Courts and Legal Services Act 1990 s 22(9) (prospectively repealed: see note 1). As to when the Ombudsman may not investigate a complaint see PARA 426. As to the extension of the Ombudsman's jurisdiction in relation to probate see PARA 427.

4 For these purposes, 'professional body' means any body which, or the holder of any office who:

- 160 (1) has disciplinary powers in relation to the person mentioned in head (1) in the text (Courts and Legal Services Act 1990 s 22(11) (prospectively repealed: see note 1)); and
- 161 (2) is specified in an order made by the Secretary of State for these purposes (s 22(11) (as so prospectively repealed)).

In exercise of the power so conferred, the following are professional bodies specified for these purposes:

- 162 (a) the Solicitors Regulation Authority (see PARA 619 et seq) (Legal Services Ombudsman (Jurisdiction) Order 1990, SI 1990/2485, Schedule Pt I);
- 163 (b) the Bar Standards Board (see PARA 1049) (Schedule Pt I);
- 164 (c) the Council for Licensed Conveyancers (see PARA 1320) (Schedule Pt I);
- 165 (d) the Institute of Legal Executives (see PARA 1465) (Schedule Pt I (amended by SI 1998/935));
- 166 (e) the Chartered Institute of Patent Agents (Legal Services Ombudsman (Jurisdiction) Order 1990, SI 1990/2485, Schedule Pt I (amended by SI 1999/2905));
- 167 (f) the Institute of Trade Mark Attorneys (Legal Services Ombudsman (Jurisdiction) Order 1990, SI 1990/2485, Schedule Pt I (amended by SI 2005/489)); and
- 168 (g) the Association of Law Costs Draftsmen (Legal Services Ombudsman (Jurisdiction) Order 1990, SI 1990/2485, Schedule Pt I (amended by SI 2006/3362)).

The Legal Services Ombudsman (Jurisdiction) Order 1990, SI 1990/2485, refers to the Law Society (see head (a)), and the General Council of the Bar (see head (b)). However the bodies responsible are the Solicitors Regulation Authority (see PARA 619), and the Bar Standards Board (see PARA 1049) respectively.

5 As to the meaning of 'authorised advocate' see PARA 497 note 7.

6 As to the meaning of 'authorised litigator' see PARA 498 note 6.

7 As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11; and PARA 1319 note 3 (definition applied by the Courts and Legal Services Act 1990 s 119(1)).

8 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

9 For these purposes, 'recognised body' means any body recognised under the Administration of Justice Act 1985 s 9 (incorporated practices: see PARA 688 et seq) or under s 32 (incorporated bodies carrying on business of provision of conveyancing services) (see PARA 1392 et seq): Courts and Legal Services Act 1990 s 22(11) (as prospectively repealed: see note 1). As to the meaning of 'conveyancing services' see PARA 495 note 5.

10 As to the meaning of 'duly certificated notary public' see the Solicitors Act 1974 s 87(1) (definition prospectively repealed); and PARA 1412 (definition applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 83, 97(1), (2), Sch 23)).

11 Courts and Legal Services Act 1990 s 22(1)(a) (as prospectively repealed: see note 1). Provision is made for the Ombudsman to investigate an allegation relating to a complaint made to a professional body in Scotland, and for the Scottish Ombudsman to investigate a complaint made to a professional body in England and Wales: see s 22(8)(a), (b), (11) (as prospectively repealed: see note 1). As to the meaning of 'member' see PARA 351 note 3.

12 Courts and Legal Services Act 1990 s 22(1)(b) (as prospectively repealed: see note 1).

13 Courts and Legal Services Act 1990 s 22(1) (as prospectively repealed: see note 1).

UPDATE

424-427 Appointment ... Extension of jurisdiction in relation to probate

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

425 When the Ombudsman may investigate

NOTE 10--Repeal of definition in force 1 January 2010: SI 2009/3250.

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426. When the Ombudsman may not investigate.

Until a day to be appointed the following provisions have effect¹. The Legal Services Ombudsman² must not investigate an allegation while:

- 244 (1) the complaint is being investigated by the professional body concerned³;
- 245 (2) an appeal is pending against the determination of the complaint by that body⁴; or
- 246 (3) the time within which such an appeal may be brought by any person has not expired⁵.

However the above does not apply if:

- 247 (a) the allegation is that the professional body has acted unreasonably in failing to start an investigation into the complaint or, having started such an investigation, has failed to complete it within a reasonable time⁶; or
- 248 (b) the Ombudsman is satisfied that, even though the complaint is being investigated by the professional body concerned, an investigation by him is justified⁷.

The Ombudsman must not investigate any issue which is being or has been determined by a court, the Solicitors Disciplinary Tribunal⁸, the Disciplinary Tribunal of the Council of the Inns of Court, or any tribunal specified in an order made by the Secretary of State⁹. Nor may he investigate any allegation relating to a complaint against any person which concerns an aspect of his conduct in relation to which he has immunity from any action in negligence or contract¹⁰. The Ombudsman may, however, investigate an allegation even though:

- 249 (i) the complaint relates to a matter which arose before 1 November 1990¹¹; or
- 250 (ii) the person making the complaint may be entitled to bring proceedings in any court in respect of the matter complained of¹².

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Ombudsman see PARA 424.

3 Courts and Legal Services Act 1990 s 22(5)(a) (as prospectively repealed: see note 1). As to the meaning of 'professional body' see PARA 425 note 4.

4 Courts and Legal Services Act 1990 s 22(5)(b) (as prospectively repealed: see note 1).

5 Courts and Legal Services Act 1990 s 22(5)(c) (as prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 s 22(6)(a) (as prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 s 22(6)(b) (as prospectively repealed: see note 1).

8 As to the Solicitors Disciplinary Tribunal see PARA 906. As to the meaning of 'court' see PARA 302 note 13.

9 Courts and Legal Services Act 1990 s 22(7)(a) (as prospectively repealed (see note 1); amended by SI 2003/1887). The following tribunals are specified for these purposes:

- 169 (1) the Discipline and Appeals Committee of the Council for Licensed Conveyancers (see PARA 1362) (Legal Services Ombudsman (Jurisdiction) Order 1990, SI 1990/2485, art 3, Schedule Pt II); and
- 170 (2) the Disciplinary Tribunal of the Institute of Legal Executives (Legal Services Ombudsman (Jurisdiction) Order 1990, SI 1990/2485, art 3, Schedule Pt II (amended by SI 1998/935)).

10 Courts and Legal Services Act 1990 s 22(7)(b) (as prospectively repealed: see note 1).

11 le the date when the Courts and Legal Services Act 1990 was passed.

12 Courts and Legal Services Act 1990 s 22(10) (as prospectively repealed: see note 1). Until a day to be appointed 'court' includes:

- 171 (1) a tribunal that is to say (to any extent) a listed tribunal for, or for any of, the purposes of the Tribunals, Courts and Enforcement Act 2007 Sch 7 (see **ADMINISTRATIVE LAW**) (Courts and Legal Services Act 1990 s 119(1) (amended by the Tribunals, Courts and Enforcement Act 2007 Sch 8 paras 14, 15));
- 172 (2) any court-martial (Courts and Legal Services Act 1990 s 119(1) (the words 'any court-martial' are prospectively repealed by the Armed Forces Act 2006 Sch 16 para 121(b), Sch 17)); and
- 173 (3) a statutory inquiry within the meaning of the Tribunals and Inquiries Act 1992 s 16(1) (see **ADMINISTRATIVE LAW** vol 1(1) (Reissue) PARA 15) (Courts and Legal Services Act 1990 s 119(1) (amended by the Tribunals and Inquiries Act 1991 Sch 3 para 35)).

As from day to be appointed the above definition of 'court' is substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (3) and has the same meaning as in s 207 (see PARA 302 note 13). At the date at which this volume states the law no such day had been appointed.

UPDATE

424-427 Appointment ... Extension of jurisdiction in relation to probate

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(ii) The Legal Services Ombudsman/427. Extension of jurisdiction in relation to probate.

427. Extension of jurisdiction in relation to probate.

Until a day to be appointed the following provisions have effect¹. The Secretary of State may by regulation² extend the jurisdiction of the Legal Services Ombudsman³ in relation to investigations concerning complaints of a prescribed⁴ kind concerned with the provision of probate services⁵.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 The regulations may make provision for the investigation only of allegations relating to complaints made to prescribed bodies or prescribed categories of person: Courts and Legal Services Act 1990 s 26(2) (as so prospectively repealed (see note 1); amended by SI 2003/1887). Accordingly the Courts and Legal Services Act 1990 ss 21-25 (subject to modifications (see the Legal Services Ombudsman (Extension of Remit) Regulations 2004, SI 2004/2757, reg 4)) have effect in relation to the investigation by the Ombudsman of allegations relating to complaints which are made to an approved body and are concerned with the provision of probate services: see reg 3. For these purposes 'approved body' means a professional or other body which is approved by the Secretary of State under the Courts and Legal Services Act 1990 Sch 9 (see PARAS 504-506): Legal Services Ombudsman (Extension of Remit) Regulations 2004, SI 2004/2757, reg 2(b).

3 As to the Legal Services Ombudsman see PARA 424.

4 'Prescribed' means prescribed by regulations under the Courts and Legal Services Act 1990: s 119(1).

5 Courts and Legal Services Act 1990 s 26(1) (as prospectively repealed (see note 1); amended by SI 2003/1887). 'Probate services' means the drawing or preparation of any papers on which to found or oppose a grant of probate or a grant of letters of administration and the administration of the estate of a deceased person: Courts and Legal Services Act 1990 s 119(1). As to the meaning of 'administration' in relation to letters of administration see the Supreme Court Act 1981 s 128; **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 18 (definition applied by the Courts and Legal Services Act 1990 s 119(1)). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

UPDATE

424-427 Appointment ... Extension of jurisdiction in relation to probate

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

427 Extension of jurisdiction in relation to probate

NOTE 5--Appointed day is 1 October 2009: SI 2009/1604.

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428. Investigation by the Ombudsman.

Until a day to be appointed the following provisions have effect¹. If the Legal Services Ombudsman² investigates an allegation he may investigate the matter to which the complaint relates, and may at any time discontinue his investigation³. If the Ombudsman decides not to investigate an allegation which he would be entitled to investigate, or discontinues an investigation he has begun, he must notify the decision and the reason for it to the person making the allegation, any person with respect to whom the complaint was made, and the professional body concerned⁴.

The Secretary of State may give general directions concerning the discharge of the Ombudsman's functions⁵. Subject to any such direction and to the provisions of the Courts and Legal Services Act 1990, the Ombudsman may make such provision as he considers appropriate for the discharge of his functions⁶.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Ombudsman see PARA 424.

3 Courts and Legal Services Act 1990 s 22(2), (3) (as prospectively repealed: see note 1).

4 Courts and Legal Services Act 1990 s 22(4) (as prospectively repealed: see note 1).

5 Courts and Legal Services Act 1990 Sch 3 para 1(1) (as prospectively repealed (see note 1); amended by SI 2003/1887). Any such directions must be published by the Secretary of State in such manner as appears to him to be appropriate: Courts and Legal Services Act 1990 Sch 3 para 1(2) (as so prospectively repealed; amended by SI 2003/1887). The Secretary of State may require any professional body (within the meaning of the Courts and Legal Services Act 1990 s 22 (see PARA 425 note 4)) to make payments of such amount as the Secretary of State considers appropriate to the Ombudsman towards meeting the expenditure incurred (or to be incurred) by him in the discharge of his functions: Sch 3 para 7(1) (as so prospectively repealed; substituted by the Access to Justice Act 1999 s 50 and amended by SI 2003/1887). To the extent that that expenditure is not met by payments under the Courts and Legal Services Act 1990 Sch 3 para 7(1), it must be met by the Secretary of State out of money provided by Parliament: Sch 3 para 7(1A) (as so prospectively repealed; added by the Access to Justice Act 1999 s 50 and amended by SI 2003/1887). The Ombudsman may, with the approval of the Secretary of State, pay fees or allowances to any person who, in the Ombudsman's opinion, is qualified to assist him in the discharge of his functions and who so assists him: Courts and Legal Services Act 1990 Sch 3 para 7(2) (as so prospectively repealed; amended by SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 3 para 1(3) (as prospectively repealed: see note 1). In particular, the Ombudsman may make provision as to:

174 (1) the procedure to be followed in relation to any investigation conducted by him or on his behalf (Sch 3 para 1(4)(a) (as so prospectively repealed));

175 (2) the form and conduct of any such investigation (Sch 3 para 1(4)(b) (as so prospectively repealed)); and

176 (3) the form, content and publication of reports under s 23 (see PARA 431) (Sch 3 para 1(4)(c) (as so prospectively repealed)).

He may delegate any of his functions to such members of his staff as he thinks fit, but all recommendations and reports prepared by him or on his behalf must be signed by him: see Sch 3 para 2 (as so prospectively repealed). As to the power to appoint staff see Sch 3 para 4; and PARA 429.

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429. Staff.

Until a day to be appointed the following provisions have effect¹. The Legal Services Ombudsman² may appoint such staff as he thinks necessary for the discharge of his functions³.

Appointments must be made by the Ombudsman on such terms and conditions (including terms as to pensions, allowances and gratuities) as he may, with the approval of the Secretary of State, determine⁴.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Ombudsman see PARA 424.

3 Courts and Legal Services Act 1990 Sch 3 para 4(1) (as prospectively repealed: see note 1).

4 Courts and Legal Services Act 1990 Sch 3 para 4(2) (as prospectively repealed (see note 1); amended by the Access to Justice Act 1999 Sch 15 Pt II and SI 2003/1887). The reference in the Courts and Legal Services Act 1990 Sch 3 para 4(2) to pensions, allowances or gratuities includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the Ombudsman's staff who suffer loss of employment or loss or diminution of emoluments: Sch 4 para 4(3) (as so prospectively repealed).

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430. Procedure and offences.

Until a day to be appointed the following provisions have effect¹. Where the Legal Services Ombudsman² is conducting an investigation he may require any person to furnish such information or produce such documents as he considers are relevant to the investigation³. For the purposes of any such investigation, the Ombudsman has the same powers as the High Court in respect of attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad, and in respect of the production of documents⁴.

If any person is in contempt of the Ombudsman⁵ in relation to any investigation conducted by him⁶, the Ombudsman may certify that contempt to the High Court⁷, and the High Court may inquire into the matter⁸. After hearing any witness produced against, or on behalf of, the person concerned and considering any statement offered in his defence, the High Court may deal with him in any manner that would be available to it had he been in contempt of the High Court⁹.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Ombudsman see PARA 424.

3 Courts and Legal Services Act 1990 s 25(1) (as prospectively repealed: see note 1).

4 Courts and Legal Services Act 1990 s 25(2) (as prospectively repealed: see note 1). No person is, however, to be compelled by virtue of s 25(2) to give evidence or produce a document he could not be compelled to give or produce in civil proceedings before the High Court: s 25(3) (as so prospectively repealed).

5 A person is in contempt of the Ombudsman if he acts, or fails to act, in any way which would constitute contempt if the investigation being conducted by the Ombudsman were civil proceedings in the High Court: Courts and Legal Services Act 1990 s 25(5) (as prospectively repealed: see note 1).

6 He under the Courts and Legal Services Act 1990 s 22: see PARAS 425-428.

7 Courts and Legal Services Act 1990 s 25(4) (as prospectively repealed: see note 1).

8 Courts and Legal Services Act 1990 s 25(6) (as prospectively repealed: see note 1).

9 Courts and Legal Services Act 1990 s 25(7) (as prospectively repealed: see note 1).

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431. Making of recommendations and orders.

Until a day to be appointed the following provisions apply¹. Where the Legal Services Ombudsman² has completed an investigation³ he must send a written report of his conclusions to:

- 251 (1) the person making the allegation⁴;
- 252 (2) the person with respect to whom the complaint was made⁵;
- 253 (3) any other person with respect to whom he makes a recommendation⁶; and
- 254 (4) the professional body⁷ concerned⁸.

In his report the Ombudsman may recommend⁹ that:

- 255 (a) the complaint be reconsidered by the professional body concerned¹⁰;
- 256 (b) the professional body concerned or any other relevant disciplinary body consider exercising its powers in relation to the person with respect to whom the complaint was made or any person who was connected with him¹¹ at the material time¹²;
- 257 (c) the person with respect to whom the complaint was made or any person so connected with him pay compensation of a specified amount to the complainant for loss suffered by him, or inconvenience or distress caused to him, as a result of the matter complained of¹³;
- 258 (d) the professional body concerned pay compensation of a specified amount to the person making the complaint for loss suffered by him, or inconvenience or distress caused to him, as a result of the way in which the complaint was handled by that body¹⁴;
- 259 (e) the person or professional body to pay compensation under head (c) or head (d) above make a separate payment to the person making the allegation of a specified amount by way of reimbursement of the cost or part of the cost of making the allegation¹⁵.

If after completing any investigation under the Legal Services Act 2007 the Ombudsman considers that, rather than recommending the taking of any action by any person or professional body under head (c), (d) or (e) above, he should make an order requiring the taking of that action by the person or body he must afford the person or body, and the person who made the allegation, a reasonable opportunity of appearing before him to make representations and having considered any representations from them, he may, in reporting his conclusions, make the order¹⁶.

Publication of any report by the Ombudsman and any publicity given for failure to comply with a recommendation are absolutely privileged for the purposes of the law of defamation¹⁷.

¹ As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

² As to the Legal Services Ombudsman see PARA 424.

- 3 le under the Courts and Legal Services Act 1990: see PARA 424 et seq.
 - 4 Courts and Legal Services Act 1990 s 23(1)(a) (as prospectively repealed: see note 1).
 - 5 Courts and Legal Services Act 1990 s 23(1)(b) (as prospectively repealed: see note 1).
 - 6 Courts and Legal Services Act 1990 s 23(1)(c) (as prospectively repealed: see note 1). The recommendation mentioned in the text refers to recommendations made under s 23(2) or s 23(2A): s 23(1)(c) (as so prospectively repealed; amended by the Access to Justice Act 1999 s 49(1), (2)).
 - 7 As to the meaning of 'professional body' see PARA 425 note 4.
 - 8 Courts and Legal Services Act 1990 s 23(1)(d) (as prospectively repealed: see note 1).
 - 9 More than one such recommendation may be included in such a report: Courts and Legal Services Act 1990 s 23(3) (as prospectively repealed: see note 1). Where the Ombudsman includes any recommendation in such a report, the report must give his reasons for making it: s 23(4) (as so prospectively repealed). As to failure to comply with the recommendations see PARA 432.
 - 10 Courts and Legal Services Act 1990 s 23(2)(a) (as prospectively repealed: see note 1).
 - 11 For these purposes, the person with respect to whom a complaint is made (the 'first person') and another person (the 'second person') are connected if:
 - 177 (1) the second person employs the first and is an authorised advocate, authorised litigator, duly certificated notary public, licensed conveyancer or partnership (Courts and Legal Services Act 1990 s 23(11)(a) (as prospectively repealed: see note 1));
 - 178 (2) they are both partners in the same partnership (s 23(11)(b) (as so prospectively repealed)); or
 - 179 (3) the second person is a recognised body which employs the first person or of which the first person is an officer (s 23(11)(c) (as so prospectively repealed)).
- As to the meaning of 'authorised advocate' see PARA 497 note 7; as to the meaning of 'authorised litigator' see PARA 498 note 6; and as to the meaning of 'recognised body' see PARA 687 note 3. As to the meaning of 'duly certificated notary public' see the Solicitors Act 1974 s 87(1) (definition prospectively repealed); and PARA 1319 (definition applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 83, 97(1), (2), Sch 23)). As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11; and PARA 1319 note 3 (definition applied by the Courts and Legal Services Act 1990 s 119(1)).
- 12 Courts and Legal Services Act 1990 s 23(2)(b) (as prospectively repealed: see note 1). It is the duty of any person to whom a report is sent under head (b), (c) or (d) in the text to have regard to the conclusions and recommendations set out in it, so far as they concern him: s 23(6) (as so prospectively repealed; amended by the Access to Justice Act 1999 s 49(1), (6)). Where a report is sent to any person under the Courts and Legal Services Act 1990 s 23 and it includes a recommendation directed at him, he must, before the end of the period of three months beginning with the date on which the report was sent, notify the Ombudsman of the action which he has taken, or proposes to take, to comply with the recommendation: s 23(7) (as so prospectively repealed).
 - 13 Courts and Legal Services Act 1990 s 23(2)(c) (as prospectively repealed: see note 1). See also note 12.
 - 14 Courts and Legal Services Act 1990 s 23(2)(d) (as prospectively repealed: see note 1). See also note 12.
 - 15 Courts and Legal Services Act 1990 s 23(2)(e) (as prospectively repealed: see note 1). See also note 12.
 - 16 Courts and Legal Services Act 1990 s 23(2A) (added by the Access to Justice Act 1999 s 49(1), (4); prospectively repealed (see note 1)). More than one such order may be included in a report: Courts and Legal Services Act 1990 s 23(3) (as so prospectively repealed; amended by the Access to Justice Act 1999 s 49(1), (5)). Where the Ombudsman includes any order in such a report, the report must give his reasons for making it: Courts and Legal Services Act 2007 s 23(4) (as so prospectively repealed; amended by the Access to Justice Act 1990 s 49(1), (5)).
 - 17 Courts and Legal Services Act 1990 s 23(5) (as prospectively repealed: see note 1).

UPDATE

431 Making of recommendations and orders

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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432. Failure to comply with recommendation.

Until a day to be appointed the following provisions apply¹. A person who fails to comply (whether wholly or in part) with a recommendation² so made must publicise that failure and the reasons for it in a manner specified by the Legal Services Ombudsman³. The Ombudsman may take such steps as he considers reasonable to publicise that failure if the time specified for taking or proposing action to comply with the recommendation⁴ has expired and that person has not himself publicised the failure⁵ or if the Ombudsman had reasonable cause for believing that that person will not do so before the end of that period⁶. Any reasonable expenses incurred by him in publicising the failure may be recovered by him as a civil debt from the person whose failure he has publicised⁷.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 Ie a recommendation made under the Courts and Legal Services Act 1990 s 23(2) (see PARA 431).

3 Courts and Legal Services Act 1990 s 23(8) (as prospectively repealed: see note 1). As to the Legal Services Ombudsman see PARA 424.

4 Ie the period mentioned in the Courts and Legal Services Act 1990 s 23(7): see PARA 431.

5 Ie he has not complied with the Courts and Legal Services Act 1990 s 23(8): see PARA 432.

6 Courts and Legal Services Act 1990 s 23(9) (as prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 s 23(10) (as prospectively repealed: see note 1).

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433. Advisory functions.

Until a day to be appointed the following provisions have effect¹. The Legal Services Ombudsman² may make recommendations to any professional body³ about the arrangements which that body has in force for the investigation of complaints made with respect to persons who are subject to that body's control⁴. It is the duty of a professional body to which such a recommendation is made to have regard to it⁵.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Ombudsman see PARA 424.

3 As to the meaning of 'professional body' see PARA 425 note 4.

4 Courts and Legal Services Act 1990 s 24(1) (as prospectively repealed: see note 1).

5 Courts and Legal Services Act 1990 s 24(2) (as prospectively repealed: see note 1).

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434. Annual and other reports; accounts and audit.

As from a day to be appointed the following provisions apply¹. The Legal Services Ombudsman² must make an annual report to the Secretary of State on the discharge of his functions during the year to which the report relates³. He may, in addition, report to the Secretary of State at any time on any matter relating to the discharge of the Ombudsman's functions⁴; and he must provide the Secretary of State with such information relating thereto as the Lord Chancellor may see fit to require⁵.

The Ombudsman must keep accounts with respect to his receipts and expenditure and must prepare a statement of accounts with respect to each financial year⁶. The accounts must be kept, and the statement of accounts prepared, in such form as the Secretary of State may, with the approval of the Treasury, direct⁷ and must be audited by persons appointed by the Secretary of State in respect of each financial year⁸.

1 As from a day to be appointed the Legal Services Ombudsman is abolished (see PARA 423) and accordingly the Courts and Legal Services Act 1990 ss 21-26 and Sch 3 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the Legal Services Ombudsman see PARA 424.

3 Courts and Legal Services Act 1990 Sch 3 para 5(1) (as prospectively repealed (see note 1); amended by SI 2003/1887). The Secretary of State must lay a copy of any such annual report before each House of Parliament: Courts and Legal Services Act 1990 Sch 3 para 5(4) (as so prospectively repealed; amended by SI 2003/1887).

4 Courts and Legal Services Act 2007 Sch 3 para 5(2) (as prospectively repealed (see note 1); amended by SI 2003/1887).

5 Courts and Legal Services Act 2007 Sch 3 para 5(3) (as prospectively repealed (see note 1); amended by SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 3 para 6(1) (as prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 Sch 3 para 6(2) (as prospectively repealed (see note 1); amended by SI 2003/1887).

8 Courts and Legal Services Act 1990 Sch 3 para 6(3) (as prospectively repealed (see note 1); amended by SI 2003/1887). The auditors must send to the Lord Chancellor a copy of the statement of accounts and of their report and he must lay a copy of them before each House of Parliament: see Sch 3 para 6(4), (5) (as so prospectively repealed; amended by SI 2003/1887).

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(iii) Legal Services Complaints Commissioner

435. Appointment.

Until a day to be appointed the following provisions have effect¹. The Secretary of State may appoint a person as Legal Services Complaints Commissioner². Any appointment of a person as Commissioner must be for a period of not more than three years and a person appointed as Commissioner must hold and vacate office in accordance with the terms of his appointment³. At the end of his term of appointment the Commissioner must be eligible for re-appointment⁴.

The Commissioner must not be an authorised advocate⁵, authorised litigator⁶, licensed conveyancer⁷ or authorised practitioner⁸ or a notary⁹.

In certain circumstances¹⁰ the Secretary of State may appoint an acting Commissioner and pay to any person so appointed such remuneration as he may determine¹¹.

1 As from a day to be appointed the Legal Services Complaints Commissioner is abolished (see PARA 423) and accordingly the Access to Justice Act 1999 ss 51, 52, Sch 8 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 Access to Justice Act 1999 s 51(1) (as prospectively repealed (see note 1); amended by SI 2003/1887). The Legal Services Complaints Commissioner is disqualified for membership of the House of Commons and the Northern Ireland Assembly: see the House of Commons Disqualification Act 1975 Sch 1 Pt III and the Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt III (both entries added by the Access to Justice Act 1999 Sch 8 para 8; and prospectively repealed by the Legal Services Act 2007 Sch 23).

3 Access to Justice Act 1999 s 51(2) (as prospectively repealed: see note 1).

4 Access to Justice Act 1999 s 51(3) (as prospectively repealed: see note 1).

5 As to the meaning of 'authorised advocate' see the Courts and Legal Services Act 1990; the Access to Justice Act 1999 s 51(4) (as prospectively repealed: see note 1); and PARA 497 note 7.

6 As to the meaning of 'authorised litigator' see the Courts and Legal Services Act 1990; the Access to Justice Act 1999 s 51(4); and PARA 498 note 6.

7 As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11; and PARA 1319 note 3 (definition applied by virtue of the Courts and Legal Services Act 1990 and the Access to Justice Act 1999 s 51(4) (as prospectively repealed: see note 1)).

8 As to the meaning of 'authorised practitioner' see PARA 424 note 6 (applied by the Access to Justice Act 1990 s 51(4) (as prospectively repealed: see note 1)).

9 Access to Justice Act 1999 s 51(4) (as prospectively repealed: see note 1). As to notaries see PARA 1412.

10 ie where:

180 (1) the Commissioner's office becomes vacant (Access to Justice Act 1999 Sch 8 para 10(1)(a) (as prospectively repealed (see note 1); amended by SI 2003/1887));

181 (2) the Commissioner is incapable of exercising his functions or considers that it would be inappropriate for him to exercise any of his functions in connection with a particular matter, because of a possible conflict of interest or for any other reasons (Access to Justice Act 1999 Sch 8 para 10(1)(b) (as prospectively repealed (see note 1); amended by SI 2003/1887)).

11 Access to Justice Act 1999 Sch 8 para 10(2), (3) (as prospectively repealed (see note 1); amended by SI 2003/1887).

UPDATE

435 Appointment

NOTE 2--House of Commons Disqualification Act 1975 Sch 1 Pt III amended: SI 2009/1941.

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436. Functions.

Until a day to be appointed the following provisions have effect¹. If it appears to the Secretary of State that complaints about members of any professional body² are not being handled effectively and efficiently, he may by direction require the Legal Services Complaints Commissioner to consider exercising in relation to the body such of the following powers as are specified in the direction³.

Those powers are:

- 260 (1) to require a professional body to provide information, or make reports, to the Commissioner about the handling of complaints about its members⁴;
- 261 (2) to investigate the handling of complaints about the members of a professional body⁵;
- 262 (3) to make recommendations in relation to the handling of complaints about the members of a professional body⁶;
- 263 (4) to set targets in relation to the handling of complaints about the members of a professional body⁷; and
- 264 (5) to require a professional body to submit to the Commissioner a plan for the handling of complaints about its members⁸.

1 As from a day to be appointed the Legal Services Complaints Commissioner is abolished (see PARA 423) and accordingly the Access to Justice Act 1999 ss 51, 52, Sch 8 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'professional body' see PARA 425 note 4 (definition applied by the Access to Justice Act 1999 s 52(10) (as prospectively repealed: see note 1)).

3 Access to Justice Act 1999 s 52(1) (as prospectively repealed (see note 1); amended by SI 2003/1887). Where a direction under s 52(1) in relation to a professional body has been given (and not revoked), the Courts and Legal Services Act 1990 s 24(1) (see PARA 433) (power of Legal Services Ombudsman to make recommendations about arrangements for investigation of complaints) must not have effect in relation to the body: Access to Justice Act 1999 s 52(8) (as so prospectively repealed). The Secretary of State may require any professional body in relation to which a direction under s 52 had been given (and not revoked) to make payments of such amounts as the Secretary of State considers appropriate to the Commissioner towards meeting the expenditure incurred (or to be incurred) by him in the discharge of his functions: Sch 8 para 7(1) (as so prospectively repealed; amended by SI 2003/1887). To the extent that that expenditure is not met by payments under the Access to Justice Act 1999 Sch 8 para 7(1) it must be met by the Secretary of State out of money provided by Parliament: Sch 8 para 7(2) (as so prospectively repealed; amended by SI 2003/1887). The Commissioner may, with the approval of the Secretary of State, pay fees or allowances to any person who, in the Commissioner's opinion, is qualified to assist him in the discharge of his functions and who so assists him: Access to Justice Act 1999 Sch 8 para 7(3) (as so prospectively repealed; amended by SI 2003/1887).

4 Access to Justice Act 1999 s 52(2)(a) (as prospectively repealed: see note 1).

5 Access to Justice Act 1999 s 52(2)(b) (as prospectively repealed: see note 1).

6 Access to Justice Act 1999 s 52(2)(c) (as prospectively repealed: see note 1).

7 Access to Justice Act 1999 s 52(2)(d) (as prospectively repealed: see note 1).

8 Access to Justice Act 1999 s 52(2)(e) (as prospectively repealed: see note 1). As to failure to provide a plan see PARA 437.

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437. Failure to provide plan.

Until a day to be appointed the following provisions have effect¹. Where the Legal Services Complaints Commissioner requires a professional body² to submit to him a plan for the handling of complaints about its members but the body:

- 265 (1) fails to submit to him a plan which he considers adequate for securing that such complaints are handled effectively and efficiently³; or
- 266 (2) submits to him such a plan but fails to handle complaints in accordance with it⁴,

he may require the body to pay a penalty⁵.

However before requiring a professional body to pay such a penalty the Commissioner must afford it a reasonable opportunity of appearing before him to make representations⁶.

In determining the amount of any penalty which a professional body is to be required to pay the Commissioner must have regard to all the circumstances of the case, including in particular the total number of complaints about members of the body and, where the penalty is imposed in respect of a failure to handle complaints in accordance with a plan, the number of complaints not so handled and the assets of the body and the number of its members⁷.

The penalty must be paid to the Commissioner who must pay it to the Secretary of State⁸.

1 As from a day to be appointed the Legal Services Complaints Commissioner is abolished (see PARA 423) and accordingly the Access to Justice Act 1999 ss 51, 52, Sch 8 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'professional body' see the Courts and Legal Services Act 1990 s 22; and PARA 425 note 4 (definition applied by the Access to Justice Act 1999 s 52(10) (as prospectively repealed: see note 1)).

3 Access to Justice Act 1999 s 52(3)(a) (as prospectively repealed: see note 1).

4 Access to Justice Act 1999 s 52(3)(b) (as prospectively repealed: see note 1).

5 Access to Justice Act 1999 s 52(3) (as prospectively repealed: see note 1). The Secretary of State must by order made by statutory instrument specify the maximum amount of any penalty under s 52(3): s 52(5) (as so prospectively repealed (see note 1); amended by SI 2003/1887). Accordingly the Legal Services Complaints Commissioner (Maximum Penalty) Order 2004, SI 2004/2758, has been made and the maximum amount of any penalty under the Access to Justice Act 1999 s 52(3) is whichever is the lesser of £1,000,000 and 1% of the amount which is specified as the total income from all sources of the professional body in that body's most recent audited accounts at the date on which the penalty is imposed: Legal Services Complaints Commissioner (Maximum Penalty) Order 2004, SI 2004/2758, art 2.

6 Access to Justice Act 1999 s 52(4) (as prospectively repealed: see note 1).

7 Access to Justice Act 1999 s 52(6) (as prospectively repealed: see note 1).

8 Access to Justice Act 1999 s 52(7) (as prospectively repealed (see note 1); amended by SI 2003/1887).

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438. Directions for discharge of functions.

Until a day to be appointed the following provisions have effect¹. The Secretary of State may give general directions concerning the discharge of the functions of the Legal Services Complaints Commissioner². Any such directions must be published by the Secretary of State in such manner as appears to him to be appropriate³.

Subject to any such direction and to the provisions of the Access to Justice Act 1999, the Commissioner may make such provision as he considers appropriate for the discharge of his functions⁴.

1 As from a day to be appointed the Legal Services Complaints Commissioner is abolished (see PARA 423) and accordingly the Access to Justice Act 1999 ss 51, 52, Sch 8 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 Access to Justice Act 1999 Sch 8 para 1(1) (as prospectively repealed (see note 1); amended by SI 2003/1887). As to the functions of the Legal Services Complaints Commissioner see PARA 436.

3 Access to Justice Act 1999 Sch 8 para 1(2) (as prospectively repealed (see note 1); amended by SI 2003/1887).

4 Access to Justice Act 1999 Sch 8 para 1(3) (as prospectively repealed: see note 1).

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439. Staff.

Until a day to be appointed the following provisions have effect¹. The Legal Services Complaints Commissioner may appoint such staff as he thinks necessary for the discharge of his functions² and may delegate any of his functions to such members of staff as he thinks fit³.

Appointments must be made by the Commissioner on such terms and conditions (including terms as to pensions, allowances and gratuities) as he may, with the approval of the Secretary of State, determine⁴.

1 As from a day to be appointed the Legal Services Complaints Commissioner is abolished (see PARA 423) and accordingly the Access to Justice Act 1999 ss 51, 52, Sch 8 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 Access to Justice Act 1999 Sch 8 para 4(1) (as prospectively repealed: see note 1).

3 Access to Justice Act 1999 Sch 8 para 2(1) (as prospectively repealed: see note 1). However all reports prepared by or on behalf of the Commissioner must be signed by him: Sch 8 para 2(2) (as so prospectively repealed).

4 Access to Justice Act 1999 Sch 8 para 4(2) (as prospectively repealed (see note 1); amended by SI 2003/1887). The reference in the Access to Justice Act 1999 Sch 8 para 4(2) to pensions, allowances or gratuities includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the Commissioner's staff who suffer loss of employment or loss or diminution of emoluments: Sch 8 para 4(3) (as so prospectively repealed).

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440. Remuneration.

Until a day to be appointed the following provisions have effect¹. The Secretary of State must pay to, or in respect of, the Legal Services Complaints Commissioner such amounts by way of remuneration, pensions, allowances or gratuities or by way of provision for any such benefits, as he may determine².

If the Commissioner ceases to hold office and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may pay to him such sum as the Secretary of State may determine³.

1 As from a day to be appointed the Legal Services Complaints Commissioner is abolished (see PARA 423) and accordingly the Access to Justice Act 1999 ss 51, 52, Sch 8 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 Access to Justice Act 1999 Sch 8 para 3(1) (as prospectively repealed (see note 1); amended by SI 2003/1887).

3 Access to Justice Act 1999 Sch 8 para 3(2) (as prospectively repealed (see note 1); amended by SI 2003/1887).

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441. Annual and other reports; accounts and audit.

Until a day to be appointed the following provisions have effect¹. The Legal Services Complaints Commissioner must make an annual report to the Secretary of State on the discharge of his functions during the year to which the report relates². He may, in addition, report to the Secretary of State at any time on any matter relating to the discharge of the Commissioner's functions³; and he must provide the Secretary of State with such information relating to the discharge of his functions as the Secretary of State may see fit to require⁴.

The Commissioner must keep accounts with respect to his receipts and expenditure and must prepare a statement of accounts with respect to each financial year⁵. The accounts must be kept, and the statement of accounts prepared, in such form as the Secretary of State may, with the approval of the Treasury, direct⁶ and must be audited by persons appointed by the Secretary of State in respect of each financial year⁷.

1 As from a day to be appointed the Legal Services Complaints Commissioner is abolished (see PARA 423) and accordingly the Access to Justice Act 1999 ss 51, 52, Sch 8 are repealed by the Legal Services Act 2007 s 159(2), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 Access to Justice Act 1999 Sch 8 para 5(1) (as prospectively repealed (see note 1); amended by SI 2003/1887). The Secretary of State must lay before each House of Parliament a copy of any such annual report: Access to Justice Act 1999 Sch 8 para 5(4) (as so prospectively repealed; amended by SI 2003/1887).

3 Access to Justice Act 1999 Sch 8 para 5(2) (as prospectively repealed (see note 1); amended by SI 2003/1887).

4 Access to Justice Act 1999 Sch 8 para 5(3) (as prospectively repealed (see note 1); amended by SI 2003/1887).

5 Access to Justice Act 1999 Sch 8 para 6(1) (as prospectively repealed: see note 1).

6 Access to Justice Act 1999 Sch 8 para 6(2) (as prospectively repealed (see note 1); amended by SI 2003/1887).

7 Access to Justice Act 1999 Sch 8 para 6(3) (as prospectively repealed (see note 1); amended by SI 2003/1887). The auditors must send to the Secretary of State a copy of the statement of accounts and of their report and he must lay a copy of them before each House of Parliament: Access to Justice Act 1999 Sch 8 para 6(4), (5) (as so prospectively repealed; amended by SI 2003/1887).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/442. Office for Legal Complaints.

(iv) Office for Legal Complaints

A. CONSTITUTION AND ESTABLISHMENT ETC

442. Office for Legal Complaints.

The Office for Legal Complaints is a body corporate¹ and is to consist of a chairman appointed by the Legal Service Board² with the approval of the Lord Chancellor and at least six, but not more than eight, other persons appointed by the Board after consultation with the chairman³.

As from a day to be appointed the following provisions have effect⁴. The Office is not to be regarded as the servant or agent of the Crown or as enjoying any status immunity or privilege of the Crown⁵. Accordingly the Office's property is not to be regarded as property of or held on behalf of the Crown and the staff appointed in relation to it⁶ are not to be regarded as servants or agents of the Crown or as enjoying any status, immunity or privilege of the Crown⁷.

The Office for Legal Complaints is a public authority for the purposes of the Freedom of Information Act 2000⁸ and its records are public records⁹.

1 Legal Services Act 2007 s 114(1). The Lord Chancellor may pay to the Office such sums as the Lord Chancellor may determine as appropriate for the purpose of meeting the expenditure of the Office incurred under or for the purposes of the Legal Services Act 2007 and the Lord Chancellor may determine the manner in which and times at which those sums are to be paid and impose conditions on the payment of those sums: s 172(1)(b), (2).

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 15 para 1(1). The Lord Chancellor may by order amend Sch 15 para 1(1) by substituting, for the limit on the maximum number of persons for the time being specified, a different limit: Sch 15 para 1(2).

4 The Legal Services Act 2007 Sch 15 paras 27-33 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

5 Legal Services Act 2007 Sch 15 para 27(1).

6 The staff appointed under the Legal Services Act 2007 Sch 15 para 13 (see PARA 451).

7 Legal Services Act 2007 Sch 15 para 27(2).

8 See the Freedom of Information Act 2000 Sch 1 Pt 6 (prospectively amended by the Legal Services Act 2007 Sch 15 para 32).

9 See the Public Records Act 1958 Sch 1 (prospectively amended by the Legal Services Act 2007 Sch 15 para 33).

UPDATE

442 Office for Legal Complaints

TEXT AND NOTE 4--Day appointed is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/443. Appointment of members of the Office.

443. Appointment of members of the Office.

In appointing members of the Office for Legal Complaints¹ the Legal Services Board² must ensure that the chairman and the majority of the members are lay persons³. 'Lay person' is a reference to a person who has never been:

- 267 (1) an authorised person in relation to an activity which is a reserved legal activity⁴;
- 268 (2) an advocate in Scotland⁵;
- 269 (3) a solicitor in Scotland⁶;
- 270 (4) a member of the Bar of Northern Ireland⁷; or
- 271 (5) a solicitor of the Court of Judicature of Northern Ireland⁸.

If a member of the Office for Legal Complaints who is a lay person becomes a person within heads (1) to (5) above, that person ceases to be a member of the Office⁹.

An ombudsman¹⁰ may be a member (but not a chairman) of the Office for Legal Complaints¹¹ and in appointing members of the Office the Legal Services Board must ensure that a majority of the members are not ombudsmen¹².

In appointing members of the Office, the Board must have regard to the desirability of securing that the Office includes members who (between them) have experience in or knowledge of:

- 272 (a) the handling of complaints¹³;
- 273 (b) the provision of legal services¹⁴;
- 274 (c) legal education and legal training¹⁵;
- 275 (d) consumer affairs¹⁶;
- 276 (e) civil or criminal proceedings and the working of the courts¹⁷;
- 277 (f) the maintenance of the professional standards of persons who provide legal services¹⁸;
- 278 (g) non-commercial legal services¹⁹;
- 279 (h) the differing needs of consumers²⁰; and
- 280 (i) the provision of claims management services²¹.

As from a day to be appointed, members of the Office for Legal Complaints are disqualified from membership of the House of Commons and the Northern Ireland Assembly²².

1 The Office for Legal Complaints must consist of a chairman and at least six but not more than eight other persons: see the Legal Services Act 2007 Sch 15 para 1(1); and PARA 442.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 15 para 2(1), (2).

4 Legal Services Act 2007 Sch 15 para 2(3)(a). For these purposes a person is deemed to have been an authorised person in relation to an activity which is a reserved legal activity if that person has before the appointed day been:

182 (1) a barrister (Sch 15 para 2(4)(a));

- 183 (2) a solicitor (Sch 15 para 2(4)(b));
- 184 (3) a public notary (Sch 15 para 2(4)(c));
- 185 (4) a licensed conveyancer (Sch 15 para 2(4)(d));
- 186 (5) granted a certificate issued by the Institute of Legal Executives authorising the person to practise as a legal executive (Sch 15 para 2(4)(e));
- 187 (6) a registered patent attorney (Sch 15 para 2(4)(f));
- 188 (7) a registered trade mark attorney (Sch 15 para 2(4)(g)); or
- 189 (8) granted a right of audience or right to conduct litigation in relation to any proceedings by virtue of the Courts and Legal Services Act 1990 ss 27(2)(a), 28(2)(a) (see PARAS 497-498) (Legal Services Act 2007 Sch 15 para 2(4)(h)).

As to the meaning of 'barrister' see PARA 1033 and as to barristers generally see PARA 1033 et seq. As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq. As to the meaning of 'public notary' see PARA 1412. As to the meaning of 'legal executive' see PARA 1463. As to the meaning of 'registered patent agent' see Copyright, Designs and Patents Act 1988 s 275(1); and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 620. As to the meaning of 'registered trade mark attorney' see Trade Marks Act 1994; and **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) para 34. As to the meaning of 'reserved legal activity' see PARA 512. For the purposes of the Legal Services Act 2007 Sch 15 para 2(4) 'appointed day' means the day appointed for the coming into force of s 13 (see PARA 509). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11(2); and PARA 1319 note 3 (definition applied by the Legal Services Act 2007 Sch 15 para 2(5)).

- 5 Legal Services Act 2007 Sch 15 para 2(3)(b).
- 6 Legal Services Act 2007 Sch 15 para 2(3)(c).
- 7 Legal Services Act 2007 Sch 15 para 2(3)(d).
- 8 Legal Services Act 2007 Sch 15 para 2(3)(e).
- 9 Legal Services Act 2007 Sch 15 para 7.
- 10 As to the meaning of 'ombudsman' see PARA 487 note 4.
- 11 Legal Services Act 2007 Sch 15 para 3(1).
- 12 Legal Services Act 2007 Sch 15 para 3(2).
- 13 Legal Services Act 2007 Sch 15 para 4(a).
- 14 Legal Services Act 2007 Sch 15 para 4(b).
- 15 Legal Services Act 2007 Sch 15 para 4(c).
- 16 Legal Services Act 2007 Sch 15 para 4(d).
- 17 Legal Services Act 2007 Sch 15 para 4(e). As to the meaning of 'court' see PARA 302 note 13.
- 18 Legal Services Act 2007 Sch 15 para 4(f).
- 19 Legal Services Act 2007 Sch 15 para 4(g). As to the meaning of 'non-commercial legal services' see PARA 305 note 21.
- 20 Legal Services Act 2007 Sch 15 para 4(h). As to the meaning of 'consumers' see PARA 302 note 8.
- 21 Legal Services Act 2007 Sch 15 para 4(i). As to the meaning of 'claims management services' see the Compensation Act 2006 s 4; and **DAMAGES**.
- 22 See the House of Commons Disqualification Act 1975 Sch 1 Pt 2 and the Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt 2 (both prospectively amended by the Legal Services Act 2007 Sch 15 para 31).

UPDATE

443 Appointment of members of the Office

TEXT AND NOTE 22--Day appointed is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/444. Interim chief executive.

444. Interim chief executive.

As from a day to be appointed the following provisions have effect¹. The Lord Chancellor may appoint a person as the Interim Chief Executive² of the Office for Legal Complaints³.

The Interim Chief Executive may incur expenditure and do other things in the name of and on behalf of the Office for Legal Complaints from the beginning of the first interim period⁴ and after that time until the Office determines otherwise⁵. During the first interim period the Interim Chief Executive must comply with any supervisory directions⁶ given by the Lord Chancellor⁷. During the second interim period⁸ the Interim Chief Executive must comply with any supervisory directions given by the Legal Services Board⁹.

1 The Legal Services Act 2007 Sch 22 para 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 The Interim Chief Executive is to be appointed on terms and conditions determined by the Lord Chancellor and paid by the Lord Chancellor in accordance with provision made by or under the terms of appointment: Legal Services Act 2007 Sch 22 para 10(2). Appointment as the Interim Chief Executive does not confer the status of Crown servant: Sch 22 para 10(3). The Legal Services Act 2007 Sch 15 para 34 (see PARA 452) applies to the Interim Chief Executive as it applies to a member of the Office for Legal Complaints: Sch 22 para 10(10).

3 Legal Services Act 2007 Sch 22 para 10(1). As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

4 'First interim period' means the period which begins when the Legal Services Act 2007 Sch 22 para 10(5) comes into force and ends when the chairman of the Board, and at least seven other ordinary members of the Board (within the meaning of Sch 1), have been appointed in accordance with Sch 1 para 1: Sch 22 para 10(5) (a).

5 Legal Services Act 2007 Sch 22 para 10(5)(b). The things which may be done under Sch 22 para 10(5) include the appointment of staff under Sch 15 para 13 (see PARA 451) and making arrangements for assistance under Sch 15 para 18 (see PARA 453) but do not include the appointment of an ombudsman under s 122 (see PARAS 487-488) or the making of scheme rules: Sch 22 para 10(6).

6 Legal Services Act 2007 Sch 22 para 10(7).

7 The supervisory directions are:

190 (1) a direction requiring the Interim Chief Executive to provide the person giving the direction with a report on, or information relating to, such matters as are specified in the direction (Legal Services Act 2007 Sch 22 para 10(9)(a));

191 (2) a direction requiring the Interim Chief Executive to obtain the approval of the person giving the direction before incurring expenditure in such circumstances as are specified in the direction (Sch 22 para 10(9)(b));

192 (3) any other direction relating to the exercise of the Interim Chief Executive's functions which the person giving the direction considers appropriate (Sch 22 para 10(9)(c)).

8 'Second interim period' means the period which begins when the chairman of the Board, and at least seven other ordinary members of the Board (within the meaning of Sch 1), have been appointed in accordance with Sch 1 para 1 and ends when the membership of the Office for Legal Complaints is first constituted in accordance with Sch 15 para 1 (see PARA 442): Sch 22 para 10(4).

9 Legal Services Act 2007 Sch 22 para 10(8).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/445. Application of seal and proof of instruments.

445. Application of seal and proof of instruments.

As from a day to be appointed the following provisions have effect¹. The application of the seal of the Office for Legal Complaints² is to be authenticated by the signature of any member of the Office, or of its staff, who has been authorised (whether generally or specifically) by the Office for the purpose³, and any contract or instrument which, if entered into or executed by an individual, would not need to be under seal, may be entered into or executed on behalf of the Office by any person who has been authorised (whether generally or specifically) by the Office for the purpose⁴. A document purporting to be duly executed under the seal of the Office, or signed on its behalf is to be received in evidence and is to be taken to be executed or signed in that way, unless the contrary is proved⁵.

1 The Legal Services Act 2007 Sch 15 paras 27-33 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 Sch 15 para 28.

4 Legal Services Act 2007 Sch 15 para 29.

5 Legal Services Act 2007 Sch 15 para 30.

UPDATE

445-448 Application of seal and proof of instruments ... Performance targets and monitoring

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/446. General obligations.

446. General obligations.

As from a day to be appointed the following provisions have effect¹. In discharging its functions the Office for Legal Complaints² must comply with the following requirements³. The Office must, so far as is reasonably practicable, act in a way which is compatible with the regulatory objectives⁴ and which it considers most appropriate for the purpose of meeting those objectives⁵. The Office must also have regard to any principles appearing to it to represent the best practice of those who administer ombudsman schemes⁶.

The Office may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions⁷.

1 The Legal Services Act 2007 ss 116, 119 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 s 116(1).

4 As to the 'regulatory objectives' see PARA 302.

5 Legal Services Act 2007 s 116(2).

6 Legal Services Act 2007 s 116(3). As to the ombudsman scheme see PARA 465.

7 Legal Services Act 2007 s 119.

UPDATE

445-448 Application of seal and proof of instruments ... Performance targets and monitoring

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/447. Corporate governance.

447. Corporate governance.

As from a day to be appointed the following provisions have effect¹. In managing its affairs, the Office for Legal Complaints² must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it³.

1 The Legal Services Act 2007 s 117 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 s 117.

UPDATE

445-448 Application of seal and proof of instruments ... Performance targets and monitoring

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/448. Performance targets and monitoring.

448. Performance targets and monitoring.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may:

- 281 (1) set one or more performance targets relating to the performance by the Office for Legal Complaints of any of its functions³; or
- 282 (2) direct the Office to set one or more performance targets relating to the performance by the Office of any of its functions⁴.

The Board may take such steps as it regards as appropriate to monitor the extent to which any performance target set under the above provisions⁵ is being, or has been, met⁶.

¹ The Legal Services Act 2007 s 121 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. The Board must publish any target set or direction given by it under s 121: s 121(3).

³ Legal Services Act 2007 s 121(1)(a).

⁴ Legal Services Act 2007 s 121(1)(b). A direction under s 121(1)(b) may impose conditions with which the performance targets must conform: s 121(2). The Office must publish any target set by it pursuant to a direction under s 121(1)(b): s 121(4).

⁵ ie under any performance targets set under the Legal Services Act 2007 s 121.

⁶ Legal Services Act 2007 s 121(5).

UPDATE

445-448 Application of seal and proof of instruments ... Performance targets and monitoring

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/449. Terms of appointment and tenure of members.

449. Terms of appointment and tenure of members.

A member of the Office for Legal Complaints¹ is to hold and vacate office in accordance with the terms and conditions of the member's appointment² which must be for a fixed period not exceeding five years³, and a person who has held office as a member may be re-appointed once only, for a further period (whether consecutive or not) not exceeding five years⁴.

A member may at any time:

- 283 (1) resign from office by giving notice to the Legal Services Board⁵;
- 284 (2) be removed from office by the Board⁶.

The Board must consult the chairman before removing a member (other than the chairman)⁷. The chairman ceases to be chairman upon ceasing to be a member⁸.

1 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

2 Legal Services Act 2007 Sch 15 para 5.

3 Legal Services Act 2007 Sch 15 para 6(1), (2).

4 Legal Services Act 2007 Sch 15 para 6(3).

5 Legal Services Act 2007 Sch 15 para 8(1)(a). As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to notices generally see PARA 303 note 11.

6 Legal Services Act 2007 Sch 15 para 8(1)(b). The Board may not under Sch 15 para 8(1)(b) remove a member (including the chairman) from office unless the Board is satisfied that the member:

193 (1) has failed without reasonable excuse to discharge the functions of the office for a continuous period of at least six months (Sch 15 para 8(2)(a));

194 (2) has been convicted of an offence (Sch 15 para 8(2)(b));

195 (3) is an undischarged bankrupt (Sch 15 para 8(2)(c)); or

196 (4) is otherwise unfit to hold the office or unable to discharge its functions (Sch 15 para 8(2)(d)).

The chairman may be removed from office under Sch 15 para 8(1)(b) only with the consent of the Lord Chancellor: Sch 15 para 8(3). The Board may not remove an ordinary member on the ground mentioned in head (1) more than three months after the end of the period mentioned in that head: Sch 15 para 8(5).

7 Legal Services Act 2007 Sch 15 para 8(4).

8 Legal Services Act 2007 Sch 15 para 9.

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450. Remuneration of members etc.

The chairman and other members of the Office for Legal Complaints¹ are to be paid by the Legal Services Board² in accordance with provision made by or under their terms of appointment³.

The terms of appointment of the chairman or any other member may provide for the Board to pay, or make payments towards the provision of, a pension, allowance or gratuity to or in respect of that person⁴.

If the Board thinks there are circumstances that make it right for a person ceasing to hold office as chairman or another member to receive compensation, the Office may pay that person such compensation as the Board may determine⁵.

1 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 15 para 10.

4 Legal Services Act 2007 Sch 15 para 11.

5 Legal Services Act 2007 Sch 15 para 12.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/451. Staff.

451. Staff.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may appoint such staff as it considers appropriate to assist in the performance of its functions³. Staff are to be appointed on terms and conditions determined by the Office and paid by the Office in accordance with provision made by or under the terms of appointment⁴. A member of staff so appointed may be a member (but not chairman) of the Office⁵.

The terms and conditions on which an ombudsman or any member of staff is appointed may provide for the Office to pay, or make payments towards the provision of, a pension, allowance or gratuity to or in respect of that person⁶.

The Office may pay compensation for loss of employment to or in respect of an ombudsman (or former ombudsman), or a member (or former member) of staff so appointed⁷.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 Sch 15 para 13.

4 Legal Services Act 2007 Sch 15 para 14.

5 Legal Services Act 2007 Sch 15 para 15.

6 Legal Services Act 2007 Sch 15 para 16.

7 Legal Services Act 2007 Sch 15 para 17.

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/452. Exemption from liability in damages.

452. Exemption from liability in damages.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints², a member of that Office, an ombudsman and a member of the Office's staff³ are not liable for damages for anything done or omitted in the exercise or purported exercise of the functions conferred in the person concerned by or by virtue of the Legal Services Act 2007 or any other enactment⁴.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 ie an member of staff appointed under the Legal Services Act 2007 Sch 15 para 13 (see PARA 451).

4 Legal Services Act 2007 Sch 15 para 34(1), (2). However this does not apply if it is shown that the act or omission was in bad faith or so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of the Human Rights Act 1998 s 6(1): Legal Services Act 2007 Sch 15 para 34(3).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/453. Arrangements for assistance.

453. Arrangements for assistance.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may make arrangements with such persons as it considers appropriate for assistance to be provided to it or to an ombudsman³. Arrangements may include the paying of fees to such persons⁴.

The persons with whom the Office may make arrangements include approved regulators⁵ and the arrangements it may make include arrangements for assistance to be provided to an ombudsman in relation to the investigation and consideration of a complaint⁶.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 Sch 15 para 18(1).

4 Legal Services Act 2007 Sch 15 para 18(2).

5 As to the meaning of 'approved regulator' see PARA 358.

6 Legal Services Act 2007 Sch 15 para 18(3).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/454. Committees.

454. Committees.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may establish committees³ and any committee so established may establish sub-committees⁴. Only members of the Office may be members of a committee or sub-committee⁵ and a majority of the members of a committee or sub-committee must be lay persons⁶.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 Sch 15 para 19(1).

4 Legal Services Act 2007 Sch 15 para 19(2).

5 Legal Services Act 2007 Sch 15 para 19(3).

6 Legal Services Act 2007 Sch 15 para 19(4). As to the meaning of 'lay person' see PARA 443.

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/455. Proceedings.

455. Proceedings.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may regulate its own procedure, and the procedure of its committees and sub-committees, including quorum³. But the quorum of a committee or sub-committee must not be less than three⁴.

The validity of any act of the Office is not affected by a vacancy in the office of chairman or amongst the other members or by a defect in the appointment or any disqualification of a person as chairman or another member of the Office⁵.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 Sch 15 para 20(1). The Office for Legal Complaints must publish any rules of procedure made under Sch 15 para 20: Sch 15 para 20(3). Schedule 15 para 20 is without prejudice to any other power the Office for Legal Complaints has under the Legal Services Act 2007 to make rules: Sch 15 para 20(4).

4 Legal Services Act 2007 Sch 15 para 20(2).

5 Legal Services Act 2007 Sch 15 para 21.

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/456. Delegation of functions.

456. Delegation of functions.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may authorise the chairman or any other member of the Office, a committee or sub-committee of the Office, an ombudsman or a member of the Office's staff³, to exercise, on behalf of the Office, such of its functions, in such circumstances, as it may determine⁴.

A committee may delegate functions (including functions delegated to the committee) to a sub-committee, the chairman or any other member of the Office, an ombudsman or a member of the Office's staff.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 He appointed under the Legal Services Act 2007 Sch 15 para 13 (see PARA 451).

4 Legal Services Act 2007 Sch 15 para 22(1). Schedule 15 para 22(1) does not apply to the Office for Legal Complaint's functions under s 118(1) (annual report) (see PARA 460), s 122 (appointment of Chief Ombudsman and assistant ombudsmen) (see PARAS 487-488), Sch 15 para 20 (see PARA 455), Sch 15 para 23 (see PARA 457) or any power or duty the Office for Legal Complaints has to make rules under Pt 6 (ss 112-161): Sch 15 para 22(2).

5 Legal Services Act 2007 Sch 15 para 22(3). The staff mentioned in the text are staff appointed under Sch 15 para 13 (see PARA 451).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/457. Budget.

457. Budget.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² must, before the start of each financial year, adopt an annual budget which has been approved by the Legal Services Board³. The budget may, with the approval of the board, be varied by the office for the financial year at any time after its adoption⁴. The annual budget must include an indication of the distribution of resources deployed in the operation of the ombudsman scheme⁵ and the amounts of income of the Office arising or expected to arise from the operation of the scheme⁶.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Board Sch 15 para 23(1). As to the Legal Services Board see s 2; and PARAS 303-326.

4 Legal Services Board Sch 15 para 23(2).

5 As to the ombudsman scheme see PARA 465 et seq.

6 Legal Services Board Sch 15 para 23(3).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/458. Borrowing.

458. Borrowing.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² must not borrow money except with the consent of the Legal Services Board³ or in accordance with a general authorisation given by the Board⁴. However the Board may not consent or give a general authorisation for these purposes except with the consent of the Lord Chancellor⁵.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 Legal Services Act Sch 15 para 25(1).

5 Legal Services Act Sch 15 para 25(2).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/459. Accounts.

459. Accounts.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² must keep proper accounts and proper records in relation to the accounts and prepare in respect of each financial year a statement of accounts³.

Each statement of accounts must comply with any directions given by the Lord Chancellor, with the approval of the Treasury, as to:

- 285 (1) the information to be contained in it and the manner in which it is to be presented⁴;
- 286 (2) the methods and principles according to which the statement is to be prepared⁵;
- 287 (3) the additional information (if any) which is to be provided for the information of Parliament⁶.

The Office must give a copy of each statement of accounts to the Legal Services Board⁷ before the end of the month of August next following the financial year to which the statement relates and the Board must give a copy of each statement received to the Lord Chancellor⁸ and to the Comptroller and Auditor General⁹.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 Sch 15 para 26(1). 'Financial year' means the period beginning with the day on which the Office is established and ending with the next following 31 March and each successive period of 12 months: Sch 15 para 26(7).

4 Legal Services Act 2007 Sch 15 para 26(2)(a).

5 Legal Services Act 2007 Sch 15 para 26(2)(b).

6 Legal Services Act 2007 Sch 15 para 26(2)(c).

7 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

8 In respect of each financial year, the Lord Chancellor must lay before Parliament a document consisting of a copy of the statement of accounts for that year and a copy of the Comptroller and Auditor General's report on that statement: Sch 15 para 26(6).

9 Legal Services Act 2007 Sch 15 para 26(3), (4). As to the Comptroller and Auditor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 724-726. The Comptroller and Auditor General must examine, certify and report on each statement of accounts which is received under Sch 15 para 26(4) and give a copy of the Comptroller and Auditor General's report to the Lord Chancellor: Sch 15 para 26(5).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/460. Reports.

460. Reports.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² must prepare a report (the 'annual report') for each financial year³.

The annual report must deal with:

- 288 (1) the discharge of the functions of the Office⁴;
- 289 (2) the extent to which, in the Office's opinion, it has met the regulatory objectives⁵; and
- 290 (3) such other matters as the Legal Services Board⁶ may from time to time direct⁷.

The Office for Legal Complaints must include in the annual report a copy of the report prepared by the Chief Ombudsman⁸ for the financial year in question⁹.

As soon as reasonably practicable after the end of each financial year, the Office must give the Board a copy of the annual report prepared for that year¹⁰ and the Board must give a copy of the annual report to the Lord Chancellor¹¹.

The Board may also require the Office to prepare and give the Board, within a specified¹² period, a report in respect of any specified matter relating to the functions of the Office¹³.

1 The Legal Services Act 2007 ss 118, 120 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 s 118(1). For the purposes of s 118 'financial year' means the period beginning with the day on which the Office for Legal Complaints is established and ending with the next following 31 March and each successive period of 12 months: s 118(7).

4 Legal Services Act 2007 s 118(2)(a).

5 Legal Services Act 2007 s 118(2)(b). As to the regulatory objectives see PARA 302.

6 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

7 Legal Services Act 2007 s 118(2)(c).

8 Ie the report prepared under the Legal Services Act 2007 s 123 (see PARA 489). As to the Chief Ombudsman see PARA 487.

9 Legal Services Act 2007 s 118(3).

10 Legal Services Act 2007 s 118(4).

11 Legal Services Act 2007 s 118(5). The Lord Chancellor must lay a copy of the annual report before Parliament: s 118(6).

12 For the purposes of the Legal Services Act 2007 s 120 'specified' means specified in the requirement: s 120(2).

13 Legal Services Act 2007 s 120(1). The Board must publish any report given to it under s 120: s 120(3).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/461. Consultation requirements for rules.

461. Consultation requirements for rules.

As from a day to be appointed the following provisions have effect¹. If the Office for Legal Complaints² proposes to make any rules³, other than excluded rules⁴, it must publish a draft of the proposed rules⁵ accompanied by a notice which states that representations about the proposals may be made to the Office within the period specified in the notice⁶. Before making the rules, the Office must have regard to any representations duly made⁷.

The Office must publish any rules it makes and rules may not take effect before the time they are published⁸. If the rules differ from the draft rules that were published⁹ in a way which is, in the opinion of the Office, material, it must publish details of the difference¹⁰.

1 The Legal Services Act 2007 s 205 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 The Legal Services Act 2007 s 205 applies in relation to rules made by the Office for Legal Complaints under ss 112-161 and Sch 15: see s 205(1).

4 As to the meaning of 'excluded rules' see PARA 318 note 4.

5 Legal Services Act 2007 s 205(2). The Office may make a reasonable charge for providing a person with a copy of a draft published under s 205(2): s 205(8). Any amounts so paid to the Office are payable into the Consolidated Fund: see s 175(1)(n). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

6 Legal Services Act 2007 s 205(3). As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 s 205(4). Section 205 is subject to s 156(3) (see PARA 473): s 205(10).

8 Legal Services Act 2007 s 205(6). The Office may make a reasonable charge for providing a person with a copy of a draft published under s 205(6): s 205(8). Any amounts so paid to the Board are payable into the Consolidated Fund: see s 175(1)(n).

9 Ie published under the Legal Services Act 2007 s 205(2).

10 Legal Services Act 2007 s 205(5).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/A. CONSTITUTION AND ESTABLISHMENT ETC/462. Land.

462. Land.

As from a day to be appointed the following provisions have effect¹. During the initial five year period², the Office for Legal Complaints³ must not acquire or dispose of an interest in land, except with the approval of the Lord Chancellor⁴.

1 The Legal Services Act 2007 Sch 15 paras 13-34 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 The initial five year period is the period of five years beginning with the day on which the appointment of the first Interim Chief Executive under the Legal Services Act 2007 Sch 22 para 10 takes effect or the day on which the first appointment of a member of the Office for Legal Complaints takes effect, whichever first occurs: Sch 15 para 24(2).

3 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

4 Legal Services Act 2007 Sch 15 para 24(1).

UPDATE

451-462 Staff ... Land

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/B. VOLUNTARY SCHEME/463. Power to establish a voluntary scheme.

B. VOLUNTARY SCHEME

463. Power to establish a voluntary scheme.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may make rules ('voluntary scheme rules') establishing a scheme (the 'voluntary scheme') under which legal services complaints³ may be resolved quickly and with minimum formality by an independent person⁴. The scheme may only be made in relation to such kind of legal services complaints as may be specified by order made by the Lord Chancellor for such a purpose⁵.

Under the voluntary scheme redress may be provided to the complainant but no disciplinary action may be taken against the respondent⁶.

Voluntary scheme rules may confer functions on ombudsmen⁷ for the purposes of the voluntary scheme⁸.

1 The Legal Services Act 2007 s 164 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 'Legal services complaint' means a complaint which relates to an act or omission of an eligible person (the 'respondent') in the course of that person providing legal services: Legal Services Act 2007 s 164(4). For that purpose a person is eligible if at the time the act or omission took place there was no activity in relation to which the person was an authorised person or is to be regarded as having been such a person by virtue of s 129 (see PARA 466): s 164(5). As to the meaning of 'authorised person' in relation to activities which are reserved legal activities, see s 18; and PARA 515.

4 See the Legal Services Act 2007 s 164(1), (2). For the purposes of s 164 'legal services' means services provided by a person which consist of or include legal activities carried on by, or on behalf of, that person: s 164(10). Section 131 (see PARA 469) applies for the purposes of the voluntary scheme as it applies for the purposes of the ombudsman scheme: s 174(8). As to the 'ombudsman scheme' see PARA 465. Sections 155, 156 (see PARAS 472-473) apply in relation to voluntary scheme rules as they apply in relation to scheme rules: s 164(9).

5 Legal Services Act 2007 s 164(2). The order may in particular specify a kind of legal services complaint by reference to the description of the complainant, of the respondent, or of the legal services to which the complaint relates: s 164(3). At the date at which this volume states the law no such orders had been made. The Lord Chancellor may make an order under s 164(2) only on the recommendation of an interested body: s 165(1). An interested body must, if requested to do so by the Lord Chancellor, consider whether or not it is appropriate to make a recommendation for such an order. An interested body must, before making a recommendation for such an order publish a draft of the proposed recommendation, invite representations regarding the proposed recommendation and consider any such representations which are made: s 165(3). Where the Lord Chancellor receives a recommendation from an interested body for an order under s 164(2), the Lord Chancellor must consider whether to follow the recommendation: s 165(4). If the Lord Chancellor decides not to follow the recommendation, the Lord Chancellor must publish a notice to that effect which includes the Lord Chancellor's reasons for the decision: s 165(5). For the purposes of s 165 'interested body' means the Office for Legal Complaints, the Legal Services Board or the Consumer Panel: s 165(6). As to notices generally see PARA 303 note 11. As to the Consumer Panel see PARA 324. As to the Legal Services Board see s 2; and PARAS 303-326.

6 Legal Services Act 2007 s 164(6).

- 7 As to the meaning of 'ombudsman' see PARA 487 note 4.
- 8 Legal Services Act 2007 s 164(7).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/B. VOLUNTARY SCHEME/464. Operation of voluntary scheme.

464. Operation of voluntary scheme.

As from a day to be appointed the following provisions have effect¹. A complaint may be determined under the voluntary scheme² only if:

- 291 (1) the complainant falls within a class of persons specified in voluntary scheme rules³ as qualified to make a complaint⁴;
- 292 (2) the complainant wishes to have the complaint dealt with under the scheme⁵;
- 293 (3) at the time of the act or omission to which the complaint relates, the respondent was participating in the scheme and voluntary scheme rules were in force in relation to the legal services⁶ in question⁷; and
- 294 (4) at the time the complaint is made under the scheme the respondent has not withdrawn from the scheme in accordance with its provisions⁸.

A person qualifies for participation in the voluntary scheme if the person falls within a class of persons specified as qualified in voluntary scheme rules⁹.

Complaints are to be dealt with and determined under the voluntary scheme on standard terms fixed by the Office for Legal Complaints¹⁰ with the consent of the Legal Services Board¹¹ and the Office may modify the standard terms only with the consent of the Board¹².

1 The Legal Services Act 2007 s 166 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'voluntary scheme' see the Legal Services Act 2007 s 164(2); and PARA 463 (definition applied by s 166(9)).

3 As to the meaning of 'voluntary scheme rules' see the Legal Services Act 2007 s 164(2); and PARA 463 (definition applied by s 166(9)).

4 Legal Services Act 2007 s 166(1)(a).

5 Legal Services Act 2007 s 166(1)(b).

6 As to the meaning of 'legal services' see the Legal Services Act 2007 s 164(10); and PARA 463 note 4 (definition applied by s 166(9)).

7 Legal Services Act 2007 s 166(1)(c). In such circumstances as may be specified in voluntary scheme rules, a complaint may be dealt with under the voluntary scheme even though s 166(1)(c) would otherwise prevent that: s 166(3). However this applies only if the respondent participates in the voluntary scheme on the basis that complaints of that kind are to be dealt with under the scheme: s 166(4).

8 Legal Services Act 2007 s 166(1)(d).

9 Legal Services Act 2007 s 166(2).

10 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

11 Legal Services Act 2007 s 166(5). As to the Legal Services Board see s 2; and PARAS 303-326. Section 204(3) which sets out provisions relating to orders, regulations and rules made under the Legal Services Act 2007 applies to the standard terms as it applies to rules made by the Office for Legal Complaints: see s 166(7). The standard terms may in particular make provision:

- 197 (1) requiring the making of payments to the Office for Legal Complaints by persons participating in the scheme of such amounts, at such times and in such circumstances, as may be determined by the Office (s 166(8)(a));
- 198 (2) as to the award of costs on the determination of a complaint (including provision for an award of costs in favour of the Office for the purpose of providing a contribution to resources deployed in dealing with the complaint) (s 166(8)(b)).

Any sum so received is payable into the Consolidated Fund: see s 175(1)(i). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

12 Legal Services Act 2007 s 166(6).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(A) Generally/465. The ombudsman scheme.

C. OMBUDSMAN SCHEME

(A) GENERALLY

465. The ombudsman scheme.

As from a day to be appointed the following provisions have effect¹. A new legal complaints scheme (the 'ombudsman scheme')² is introduced by the Legal Services Act 2007 under which complaints which:

- 295 (1) relate to an act or omission of a person (the 'respondent')³ in carrying on an activity⁴; and
- 296 (2) are within the jurisdiction of the scheme⁵,

may be resolved quickly and with minimum formality by an independent person⁶.

Under the scheme redress may be provided to the complainant⁷ but no disciplinary action may be taken against the respondent⁸.

The scheme is to be administered by the Office for Legal Complaints⁹.

1 The Legal Services Act 2007 ss 113, 115 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 The scheme is to be operated under a name (which must include the word 'ombudsman') chosen by the Office for Legal Complaints: Legal Services Act 2007 s 115(3).

3 As to the meaning of 'respondent' see PARA 466 note 3.

4 Legal Services Act 2007 s 113(1)(a).

5 Legal Services Act 2007 s 113(1)(b). As to when a complaint is within the jurisdiction of the scheme see s 125; and PARA 466.

6 Legal Services Act 2007 s 113(1).

7 The Legal Services Act 2007 s 157 (see PARA 386) prevents provision relating to redress being included in the regulatory arrangements of an approved regulator, or licensing rules made by the Legal Services Board in its capacity as a licensing authority: s 113(3). As to the meaning of 'approved regulator' see PARA 358. As to the Legal Services Board see s 2; and PARAS 303-326. 'Complainant', in relation to a complaint, means the person who makes the complaint: s 160. As to the modification of references to the complainant in Pt 6 (ss 112-161) see s 132(4); and PARA 470 note 5. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

8 Legal Services Act 2007 s 113(2). But neither the scheme nor any provision made by Pt 6 (ie ss 112-161) affects any power of an approved regulator, or the Legal Services Board in its capacity as a licensing authority, to take disciplinary action: s 113(4). 'Disciplinary action' means the imposition of sanctions, in respect of a breach of conduct rules or discipline rules, on a person who is an authorised person in relation to an activity which is a reserved legal activity: s 113(5). As to the meaning of 'authorised person' in relation to activities which are reserved legal activities see s 18; and PARA 515. As to the meaning of 'conduct rules' see PARA 377 note 5. As to the meaning of 'discipline rules' see PARA 369 note 8.

9 Legal Services Act 2007 s 115(2). As to the Office for Legal Complaints see s 114; and PARA 442. The scheme is to be administered by the Office in accordance with the Pt 6 (ss 112-161) and with scheme rules made by the Office: s 115(1). 'Scheme rules' means rules made by the Office for Legal Complaints: s 115(2). As to scheme rules see PARA 471.

UPDATE

465 The ombudsman scheme

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 115 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/466. Jurisdiction of the scheme.

(B) JURISDICTION AND OPERATION OF THE SCHEME

466. Jurisdiction of the scheme.

As from a day to be appointed the following provisions have effect¹. A complaint which relates to an act or omission² of a person (the 'respondent')³ in carrying on an activity is within the jurisdiction of the ombudsman scheme⁴ if:

- 297 (1) the complaint is not excluded because the respondent's complaints procedure was not used⁵ or excluded by scheme rules⁶;
- 298 (2) the respondent was, at the relevant time⁷, an authorised person⁸ in relation to an activity which was a reserved legal activity⁹ (whether or not the act or omission relates to a reserved legal activity)¹⁰; and
- 299 (3) the complainant is within certain provisions¹¹ and wishes to have the complaint dealt with under the scheme¹².

1 The Legal Services Act 2007 ss 125, 128, 129 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 For these purposes references to an act or omission include an act or omission which occurs before the coming into force of the Legal Services Act 2007 s 125: s 125(2).

3 'Respondent' in relation to a complaint, is to be construed in accordance with the Legal Services Act 2007 s 125 (except that, where scheme rules of the kind mentioned in s 133(3)(c) (see PARA 471) have effect, references to the 'respondent' include a person treated as a co-respondent under those rules): s 160.

4 As to the ombudsman scheme generally see PARA 465.

5 Is excluded from the jurisdiction of the scheme by the Legal Services Act 2007 s 126(1) (see PARA 467).

6 Legal Services Act 2007 s 125(1)(a). Scheme rules mentioned in the text are rules made under s 127 (see PARA 467).

7 'Relevant time', in relation to a complaint, means at the time when the act or omission to which the complaint relates took place: Legal Services Act 2007 s 128(7).

8 As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515.

9 As to the meaning of 'reserved legal activity' see PARA 512.

10 Legal Services Act 2007 ss 125(1)(b), 128(1). For the purposes of s 128 a person is to be regarded as an authorised person in relation to an activity which is a reserved legal activity, at a time before s 125 comes into force, if the person was at that time:

199 (1) a person of the kind mentioned in Sch 15 para 2(4) (see PARA 443 note 4) (s 129(1)(a));

200 (2) a body recognised under the Administration of Justice Act 1985 s 9 (see PARAS 688, 691), s 32 (see PARAS 1392, 1394) (s 129(1)(b)); or

- 201 (3) a legal partnership, a conveyancing partnership, a patent attorney body or a trade mark attorney body (Legal Services Act 2007 s 129(1)(c)).

As to the meaning of 'conveyancing partnership' see Sch 5 para 11(5); and PARA 1410 (definition applied by s 129(2)). As to the meaning of 'legal partnership' see Sch 5 para 7(4); and PARA 732 note 10 (definition applied by s 129(2)). As to the meaning of 'patent attorney body' see Sch 5 para 14(7); and PARA 578 (definition applied by s 129(2)). As to the meaning of 'trade mark attorney body' see Sch 5 para 16(7); and PARA 579 (definition applied by s 129(2)).

11 lie within the Legal Services Act 2007 s 128 (see PARA 468). As to the meaning of 'complainant' see PARA 465 note 7.

12 Legal Services Act 2007 s 125(1)(c).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/467. Complaints excluded.

467. Complaints excluded.

As from a day to be appointed the following provisions have effect¹. A complaint is excluded from the jurisdiction of the ombudsman scheme² if the complainant³ has not first used the respondent's complaints procedures⁴ in relation to the complaint⁵.

Scheme rules may make provision excluding complaints of a description specified in the rules from the jurisdiction of the ombudsman scheme⁶. However they may not make provision excluding a complaint from the jurisdiction of the ombudsman scheme on the ground that it relates to a matter which has been or could be dealt with under the disciplinary arrangements of the respondent's relevant authorising body⁷.

1 The Legal Services Act 2007 ss 126, 127 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the ombudsman scheme see PARA 465.

3 As to the meaning of 'complainant' see PARA 465 note 7.

4 As to the meaning of 'respondent' see PARA 466 note 3. The respondent's complaints procedures are the procedures established by the respondent, or which the respondent participates in or is subject to, in accordance with regulatory arrangements (or licensing rules of the Legal Services Board) made in accordance with s 112 (see PARA 385); s 126(2). As to the Legal Services Board see s 2; and PARAS 303-326. As to the meaning of 'regulatory arrangements' see PARA 377. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

5 Legal Services Act 2007 s 126(1). However scheme rules may provide that s 126(1) does not apply in specified circumstances: s 126(3).

6 Legal Services Act 2007 s 127(1).

7 Legal Services Act 2007 s 127(2). For the purposes of Pt 6 (ss 112-161) 'relevant authorising body', in relation to a person, means:

202 (1) an approved regulator by which the person is authorised to carry on an activity which is a reserved legal activity (s 160); or

203 (2) where the person is authorised to carry on such an activity by the Board in its capacity as a licensing authority, the Board (s 160).

As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

UPDATE

467 Complaints excluded

TEXT AND NOTE 1--Day appointed is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/468. Applicable complainants.

468. Applicable complainants.

As from a day to be appointed the following provisions have effect¹. The complainant is within the jurisdiction of the ombudsman scheme² if he meets the following two conditions but does not fall within excluding provisions³. The first condition is that the complainant is an individual or a person (other than an individual) of a description prescribed by order made by the Lord Chancellor in accordance with a recommendation⁴. The second condition is that:

- 300 (1) the services to which the complaint relates were provided by the respondent to the complainant⁵;
- 301 (2) the services to which the complaint relates were provided by the respondent to an authorised person, in relation to an activity which is a reserved legal activity, who procured them on the complainant's behalf⁶;
- 302 (3) the services to which the complaint relates were provided by the respondent in the respondent's capacity as a personal representative or trustee or to a person acting as a personal representative or trustee, and the complainant is a beneficiary of the estate or trust in question⁷; or
- 303 (4) the complainant satisfies such other conditions, in relation to the services to which the complaint relates, as may be prescribed by order made by the Lord Chancellor in accordance with a recommendation⁸.

The complainant is excluded if, at the relevant time:

- 304 (a) he was an authorised person in relation to an activity which was a reserved legal activity and the services to which the complaint relates were procured by him on behalf of another person⁹;
- 305 (b) the complainant was a public body or was acting on behalf of such a body in relation to the services to which the complaint relates¹⁰; or
- 306 (c) he was a person prescribed, or of a description prescribed, as excluded by order made by the Lord Chancellor in accordance with a recommendation¹¹.

1 The Legal Services Act 2007 s 128 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 He is within the Legal Services Act 2007 s 128. As to the meaning of 'complainant' see PARA 465 note 7.

3 Legal Services Act 2007 s 128(2). The excluding provisions mentioned in the text are those under s 128(5).

4 Legal Services Act 2007 s 128(3). An interested body may, at any time, recommend to the Lord Chancellor that the Lord Chancellor make an order under s 128(3)(b), (4)(d), (5)(c): s 130(1). An interested body must, if requested to do so by the Lord Chancellor, consider whether or not it is appropriate to make a recommendation under s 130(1): s 130(2). An interested body must, before making a recommendation under s 130(1) publish a draft of the proposed recommendation, invite representations regarding the proposed recommendation and consider any such representations which are made: s 130(3). Where the Lord Chancellor receives a recommendation under s 130(1), the Lord Chancellor must consider whether to follow the recommendation: s 130(4). If the Lord Chancellor decides not to follow the recommendation, the Lord Chancellor must publish a notice to that effect which includes the Lord Chancellor's reasons for the decision: s 130(5). For these purposes

'interested body' means the Office for Legal Complaints, the Legal Services Board or the Consumer Panel: s 130(6). At the date at which this volume states the law no such orders had been made. As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 s 128(4)(a). As to the meaning of 'respondent' see PARA 466 note 3.

6 Legal Services Act 2007 s 128(4)(b), (6). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'reserved legal activities' see PARA 512.

7 Legal Services Act 2007 s 128(4)(c).

8 Legal Services Act 2007 s 128(4)(d). The recommendation mentioned in the text is one under s 130 (see note 4).

9 Legal Services Act 2007 s 128(5)(a).

10 Legal Services Act 2007 s 128(5)(b). 'Public body' means any government department, local authority or other body constituted for purposes of the public services, local government or the administration of justice: s 128(7).

11 Legal Services Act 2007 s 128(5)(c). The recommendation mentioned in the text refers to one under s 130 (see note 4).

UPDATE

468 Applicable complainants

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 ss 128(3)(b), (4) (d), (5)(c), 130 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/469. Acts and omissions by employees.

469. Acts and omissions by employees.

As from a day to be appointed the following provisions have effect¹. For the purposes of the ombudsman scheme², any act or omission by a person in the course of the person's employment is to be treated as also an act or omission by the person's employer, whether or not it was done with the employer's knowledge or approval³.

For the purposes of the ombudsman scheme⁴, any act or omission by a partner in a partnership in the course of carrying on, in the usual way, business of the kind carried on by the partnership is to be treated as also an act or omission by the partnership⁵. However this does not apply if the partner had no authority to act for the partnership and the person purporting to rely on that subsection knew, at the time of the act or omission, that the partner had no such authority⁶.

1 The Legal Services Act 2007 s 131 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 This also applies for the purposes of the Legal Services Act 2007 Pt 6 (ss 112-161).

3 Legal Services Act 2007 s 131(1).

4 This also applies for the purposes of the Legal Services Act 2007 Pt 6 (ss 112-161).

5 Legal Services Act 2007 s 131(2).

6 Legal Services Act 2007 s 131(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/470. Continuity of complaints.

470. Continuity of complaints.

As from a day to be appointed the following provisions have effect¹. The ability of a person to make a complaint about an act or omission of a partnership or other unincorporated body is not affected by any change in the membership of the partnership or body². Scheme rules must make provision determining the circumstances in which, for the purposes of the ombudsman scheme, an act or omission of a person ('A') is, where A ceases to exist and another person ('B') succeeds to the whole or substantially the whole of the business of A, to be treated as an act or omission of B³.

Such rules must, in relation to cases where an act or omission of A is treated as an act or omission of B, make provision about the treatment of complaints under the ombudsman scheme which are outstanding against A at the time A ceases to exist⁴. Scheme rules must also make provision permitting such persons as may be specified in the rules to continue a complaint made by a person who has died or is otherwise unable to act⁵.

1 The Legal Services Act 2007 s 132 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Legal Services Act 2007 s 132(1).

3 Legal Services Act 2007 s 132(2). As to the meaning of 'scheme rules' see PARA 465 note 9.

4 Legal Services Act 2007 s 132(3).

5 Legal Services Act 2007 s 132(4). For this purpose the scheme rules may modify references to the complainant in Pt 6 (ss 112-161) and in scheme rules: s 132(4). As to the meaning of 'complainant' see PARA 465 note 7.

UPDATE

470-474 Continuity of complaints ... Charges payable by respondents

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/471. Operation of the ombudsman scheme.

471. Operation of the ombudsman scheme.

As from a day to be appointed the following provisions have effect¹. Scheme rules must set out the procedure for the making of complaints under the ombudsman scheme² and the investigation, consideration and determination of complaints by an ombudsman³.

The rules may (among other things) make provision:

- 307 (1) for the whole or part of a complaint to be dismissed, in specified circumstances, without consideration of its merits⁴;
- 308 (2) for the reference of a complaint, in specified circumstances and with the consent of the complainant, to another body with a view to it being determined by that body instead of by an ombudsman⁵;
- 309 (3) for a person who, at the relevant time⁶ was an authorised person in relation to an activity to be treated in specified circumstances, for the purposes of the scheme⁷, as if that person were a co-respondent in relation to a complaint⁸;
- 310 (4) about the evidence which may be required or admitted and the extent to which it should be oral or written⁹;
- 311 (5) for requiring parties to the complaint to attend to give evidence and produce documents, and for authorising the administration of oaths by ombudsmen¹⁰;
- 312 (6) about the matters which are to be taken into account in determining whether an act or omission was fair and reasonable¹¹;
- 313 (7) for an ombudsman, in such circumstances as may be specified, to award expenses to persons in connection with attendance at a hearing before an ombudsman¹²;
- 314 (8) for an ombudsman to award costs against the respondent in favour of the complainant¹³;
- 315 (9) for an ombudsman to award costs against the complainant or the respondent in favour of the Office for Legal Complaints¹⁴ for the purpose of providing a contribution to resources deployed in dealing with the complaint, if in the ombudsman's opinion that person acted so unreasonably in relation to the complaint that it is appropriate in all the circumstances of the case to make such an award¹⁵;
- 316 (10) for the purpose of facilitating the settlement of a complaint with the agreement of the parties to it¹⁶;
- 317 (11) for specified persons to be notified of complaints, determinations and directions under the ombudsman scheme¹⁷.

No person may be required by scheme rules to provide any information or give any evidence which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court or to produce any document which that person could not be compelled to produce in such proceedings¹⁸.

¹ The Legal Services Act 2007 s 133 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the ombudsman scheme see PARA 465. For the purposes of the Legal Services Act 2007 s 133 'party', in relation to a complaint, means the complainant, the respondent and any other person who in accordance with scheme rules is to be regarded as a party to the complaint: s 133(8). As to the meaning of 'complainant' see PARA 465 note 7. As to the meaning of 'scheme rules' see PARA 465 note 9.

3 Legal Services Act 2007 s 133(1). The rules must provide that a complaint is to be entertained under the ombudsman scheme only if the complainant has made the complaint under that scheme before the applicable time limit (determined in accordance with the scheme rules) has expired and may provide that an ombudsman may extend that time limit in specified circumstances: 133(2).

4 Legal Services Act 2007 s 133(3)(a). The circumstances specified under s 133(3)(a) may include the following:

- 204 (1) the ombudsman considers the complaint or part to be frivolous or vexatious or totally without merit (s 133(4)(a));
- 205 (2) the ombudsman considers that the complaint or part would be better dealt with under another ombudsman scheme, by arbitration or by other legal proceedings (s 133(4)(b));
- 206 (3) the ombudsman considers that there has been undue delay in the making of the complaint or part, or the provision of evidence to support it (s 133(4)(c));
- 207 (4) the ombudsman is satisfied that the matter which is the subject of the complaint or part has previously been dealt with under another ombudsman scheme, by arbitration or by other legal proceedings (s 133(4)(d));
- 208 (5) the ombudsman considers that there are other compelling reasons why it is inappropriate for the complaint or part to be dealt with under the ombudsman scheme (s 133(4)(e)).

For the purposes of the Legal Services Act 2007 s 133 'specified' means specified in scheme rules: s 133(8).

5 Legal Services Act 2007 s 133(3)(b).

6 As to the meaning of 'relevant time' see the Legal Services Act 2007 s 128(7); PARA 466 note 7 (definition applied by s 133(3)(c)).

7 This also applies for the purposes of the Legal Services Act 2007 Pt 6 (ss 112-161). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

8 Legal Services Act 2007 s 133(3)(c).

9 Legal Services Act 2007 s 133(3)(d).

10 Legal Services Act 2007 s 133(3)(e). As to the meaning of 'administration of oaths' see PARA 512 note 8.

11 Legal Services Act 2007 s 133(3)(f).

12 Legal Services Act 2007 s 133(3)(g). An amount due under an award made in favour of a person by virtue of provision made under s 133(3)(g) is recoverable as a debt due to that person: s 133(7).

13 Legal Services Act 2007 s 133(3)(h). Scheme rules may authorise an ombudsman making an award of costs in accordance with rules within s 133(3)(h) or s 133(3)(i) to order that the amount payable under the award bears interest, from a time specified in or determined in accordance with the order, at a rate specified in or determined in accordance with the rules: s 133(6). An amount due under an award made in favour of a person by virtue of provision made under s 133(3)(h) is recoverable as a debt due to that person: s 133(7). As to the meaning of 'respondent' see PARA 466 note 3.

14 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

15 Legal Services Act 2007 s 133(3)(i). See note 13. An amount due under an award made in favour of a person by virtue of provision made under s 133(3)(i) is recoverable as a debt due to that person: s 133(7). Any sum so received is payable into the Consolidated Fund together with any interest payable on such an amount under s 133(6): see s 175(1)(h). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

16 Legal Services Act 2007 s 133(3)(j).

17 Legal Services Act 2007 s 133(3)(k).

18 Legal Services Act 2007 s 133(3)(l).

UPDATE

470-474 Continuity of complaints ... Charges payable by respondents

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/472. Consent requirement for rules.

472. Consent requirement for rules.

As from a day to be appointed the following provisions have effect¹. Before making scheme rules² the Office for Legal Complaints³ must obtain the consent of the Legal Services Board⁴ and, in the case of rules relating to charges payable by respondents⁵, the consent of the Lord Chancellor⁶.

1 The Legal Services Act 2007 s 155 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 This applies to scheme rules under the Legal Services Act 2007 Pt 6 (ss 112-161). For these purposes the reference to rules includes a reference to modifying rules: s 155(2). As to the meaning of 'scheme rules' see PARA 465 note 9.

3 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 See under the Legal Services Act 2007 s 136 (see PARA 474). As to the meaning of 'respondent' see PARA 466 note 3.

6 Legal Services Act 2007 s 155(1).

UPDATE

470-474 Continuity of complaints ... Charges payable by respondents

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/473. The Board's power in respect of rules.

473. The Board's power in respect of rules.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may direct the Office for Legal Complaints³ to take such steps as are necessary to:

- 318 (1) modify its scheme rules⁴ in accordance with such general requirements as are specified in the direction⁵; or
- 319 (2) make a specified modification to its scheme rules⁶.

However before giving a direction under head (2) above the Board must:

- 320 (a) give the Office a notice giving details of the proposed modification and containing a statement that representations about the proposal may be made to the Board within a period specified in the notice⁷;
- 321 (b) publish a copy of that notice⁸; and
- 322 (c) have regard to any representations duly made⁹.

Where the Board revokes a direction, it must give the Office notice of the revocation and publish that notice¹⁰.

1 The Legal Services Act 2007 s 156 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

4 As to the meaning of 'scheme rules' see PARA 465 note 9.

5 Legal Services Act 2007 s 156(1)(a).

6 Legal Services Act 2007 s 156(1)(b). However ss 155(1)(a) (see PARA 472), 205 (see PARAS 318, 461) do not apply in relation to any modification made by the Office to its rules in compliance with a direction under s 156(1)(b): s 156(3).

7 Legal Services Act 2007 s 156(2)(a). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 s 156(2)(b).

9 Legal Services Act 2007 s 156(2)(c).

10 Legal Services Act 2007 s 156(4).

UPDATE

470-474 Continuity of complaints ... Charges payable by respondents

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(B) Jurisdiction and Operation of the Scheme/474. Charges payable by respondents.

474. Charges payable by respondents.

As from a day to be appointed the following provisions have effect¹. Scheme rules² must require respondents³, in relation to complaints under the ombudsman scheme⁴, to pay to the Office for Legal Complaints⁵ such charges as may be specified in the rules⁶. The rules must provide for charges payable in relation to a complaint to be waived (or wholly refunded) where:

- 323 (1) the complaint is determined or otherwise resolved in favour of the respondent⁷; and
- 324 (2) the ombudsman is satisfied that the respondent took all reasonable steps to try to resolve the complaint under the respondent's complaints procedures⁸.

The rules may make provision as to:

- 325 (a) the circumstances in which a complaint is to be treated as determined or otherwise resolved in favour of the respondent (which may include circumstances where a complaint is settled, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of scheme rules))⁹;
- 326 (b) matters to be taken into account by the ombudsman for the purposes of head (2) above¹⁰.

The rules may, among other things:

- 327 (i) provide for the Office for Legal Complaints to reduce or waive a charge in such other circumstances as may be specified¹¹;
- 328 (ii) set different charges for different stages of the proceedings on a complaint¹²;
- 329 (iii) provide for charges to be wholly or partly refunded in such other circumstances as may be specified¹³;
- 330 (iv) provide that if the whole or any part of a charge is not paid by the time by which it is required to be paid under the rules, the unpaid balance from time to time carries interest at the rate specified in, or determined in accordance with, the rules¹⁴.

¹ The Legal Services Act 2007 s 136 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the meaning of 'scheme rules' see PARA 465 note 9.

³ As to the meaning of 'respondent' see PARA 466 note 3.

⁴ As to the ombudsman scheme see PARA 465.

⁵ As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

⁶ Legal Services Act 2007 s 136(1). Any charge which is owed to the Office for Legal Complaints by virtue of rules made under s 136 may be recovered as a debt due to the Office: s 136(6). Any charges received by the

Office by virtue of rules under s 136 together with any interest payable in accordance with those rules are payable into the Consolidated Fund: see s 175(1)(g). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

7 Legal Services Act 2007 s 136(2)(a).

8 Legal Services Act 2007 s 136(2)(b). The respondent's complaints procedures are the procedures established by the respondent, or which the respondent participates in or is subject to, in accordance with regulatory arrangements (or licensing rules of the Board) made in accordance with s 112 (see PARA 385): s 136(4). As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

9 Legal Services Act 2007 s 136(3)(a).

10 Legal Services Act 2007 s 136(3)(b).

11 Legal Services Act 2007 s 136(5)(a).

12 Legal Services Act 2007 s 136(5)(b).

13 Legal Services Act 2007 s 136(5)(c).

14 Legal Services Act 2007 s 136(5)(d).

UPDATE

470-474 Continuity of complaints ... Charges payable by respondents

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(C) Determinations under the Scheme/475. Determination of complaints.

(C) DETERMINATIONS UNDER THE SCHEME

475. Determination of complaints.

As from a day to be appointed the following provisions have effect¹. A complaint is to be determined under the ombudsman scheme² by reference to what is, in the opinion of the ombudsman making the determination, fair and reasonable in all the circumstances of the case³.

The determination may contain one or more of the following:

- 331 (1) a direction that the respondent⁴ make an apology to the complainant⁵;
- 332 (2) a direction that the fees to which the respondent is entitled in respect of the services to which the complaint relates (the 'fees') are limited to such amount as may be specified in the direction and the respondent comply, or secure compliance, with such one or more of the permitted requirements as appear to the ombudsman to be necessary in order for effect to be given to the direction⁶;
- 333 (3) a direction that the respondent pay compensation to the complainant of such an amount as is specified in the direction in respect of any loss which has been suffered by, or any inconvenience or distress which has been caused to, the complainant as a result of any matter connected with the complaint⁷;
- 334 (4) a direction that the respondent secure the rectification, at the expense of the respondent, of any such error, omission or other deficiency arising in connection with the matter in question as the direction may specify⁸;
- 335 (5) a direction that the respondent take, at the expense of the respondent, such other action in the interests of the complainant as the direction may specify⁹.

The power of the ombudsman to make a direction under heads (1) to (5) above is not confined to cases where the complainant may have a cause of action against the respondent for negligence¹⁰.

Where a determination is made under the ombudsman scheme in respect of a complaint, the total value of directions under heads (3) to (5) above contained in the determination must not exceed £30,000¹¹.

1 The Legal Services Act 2007 ss 137-139 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the ombudsman scheme see PARA 465.

3 Legal Services Act 2007 s 137(1).

4 As to the meaning of 'respondent' see PARA 466 note 3.

5 Legal Services Act 2007 s 137(2)(a). As to the meaning of 'complainant' see PARA 465 note 7.

6 Legal Services Act 2007 s 137(2)(b). For the purposes of s 137(2)(b) the 'permitted requirements' are:

- 209 (1) that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded (s 137(3)(a));
- 210 (2) that the whole or part of the fees be remitted (s 137(3)(b));
- 211 (3) that the right to recover the fees be waived, whether wholly or to any specified extent (s 137(3)(c)).

Where a direction is made under s 137(2)(b) which requires that the whole or part of any amount already paid by or on behalf of the complainant in respect of the fees be refunded the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with scheme rules: s 137(4).

7 Legal Services Act 2007 s 137(2)(c). Where a direction is made under s 137(2)(c) the direction may also provide for the amount payable under the direction to carry interest from a time specified in or determined in accordance with the direction, at the rate specified in or determined in accordance with scheme rules: s 137(4).

8 Legal Services Act 2007 s 137(2)(d).

9 Legal Services Act 2007 s 137(2)(e).

10 Legal Services Act 2007 s 137(5).

11 Legal Services Act 2007 s 138(1). For this purpose the total value of such directions is the aggregate of the amount of any compensation specified in a direction under s 137(2)(c) and the amount of any expenses reasonably incurred by the respondent when complying with a direction under s 137(2)(d) or (e): s 138(2). For the purposes of determining that total value, any interest payable on an amount within s 137(2)(a), by virtue of s 137(4) (see note 7), is to be ignored: s 138(3). An interested body may, at any time, recommend to the Lord Chancellor that s 138(1) should be amended so as to substitute the amount specified in the recommendation for the amount for the time being specified in that provision and the Lord Chancellor may accordingly amend s 138(1) by order: s 139(1), (2). At the date at which this volume states the law no such orders had been made. An interested body must, if requested to do so by the Lord Chancellor, consider whether or not it is appropriate to make a recommendation under s 139(2): s 139(3). An interested body must, before making a recommendation under s 139(2) publish a draft of the proposed recommendation, invite representations regarding the proposed recommendation and consider any such representations which are made: s 139(4). Where the Lord Chancellor receives a recommendation under s 139(2), the Lord Chancellor must consider whether to follow the recommendation: s 139(5). If the Lord Chancellor decides not to follow the recommendation, the Lord Chancellor must publish a notice to that effect which includes the Lord Chancellor's reasons for the decision: s 139(6). For the purposes of s 139 'interested body' means the Office for Legal Complaints, the Legal Services Board or the Consumer Panel: s 139(7). As to notices generally see PARA 303 note 11. As to the Legal Services Board see s 2; and PARAS 303-326. As to the Consumer Panel see PARAS 323-326.

UPDATE

475 Determination of complaints

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 137(4) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(C) Determinations under the Scheme/476. Acceptance or rejection of determination.

476. Acceptance or rejection of determination.

As from a day to be appointed the following provisions have effect¹. When an ombudsman² has determined a complaint the ombudsman must prepare a written statement of the determination³. The statement must give the ombudsman's reasons for the determination, be signed by the ombudsman and require the complainant⁴ to notify the ombudsman, before a time specified in the statement (the 'specified time'), whether the complainant accepts or rejects the determination⁵. The ombudsman must give a copy of the statement to the complainant, the respondent⁶ and any relevant authorising body in relation to the respondent⁷.

If the complainant notifies the ombudsman that the determination is accepted by the complainant, it is binding on the respondent and the complainant and is final⁸. If, by the specified time, the complainant has not notified the ombudsman of the complainant's acceptance or rejection of the determination, the complainant is to be treated as having rejected it⁹. However if:

- 336 (1) the complainant notifies the ombudsman after the specified time that the determination is accepted by the complainant¹⁰;
- 337 (2) the complainant has not previously notified the ombudsman of the complainant's rejection of the determination¹¹; and
- 338 (3) the ombudsman is satisfied that such conditions as may be prescribed by the scheme rules for the purposes of this subsection are satisfied¹²,

the determination is treated as if it had never been rejected¹³.

The ombudsman must give notice of the outcome to the complainant, the respondent and any relevant authorising body in relation to the respondent¹⁴. A copy of the determination on which appears a certificate signed by an ombudsman is evidence that the determination was made under the scheme¹⁵.

1 The Legal Services Act 2007 s 140 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'ombudsman' see PARA 487 note 4.

3 Legal Services Act 2007 s 140(1).

4 As to the meaning of 'complainant' see PARA 465 note 7.

5 Legal Services Act 2007 s 140(2).

6 As to the meaning of 'respondent' see PARA 466 note 3.

7 Legal Services Act 2007 s 140(3). As to the meaning of 'relevant authorising body' see PARA 467 note 7.

8 Legal Services Act 2007 s 140(4). Neither the complainant nor the respondent, in relation to a complaint, may institute or continue legal proceedings in respect of a matter which was the subject of a complaint, after the time when a determination by an ombudsman of the complaint becomes binding and final in accordance with s 140: s 140(11).

9 Legal Services Act 2007 s 140(5). Where a determination is rejected by virtue of s 140(5), that notice must contain a general description of the effect of s 140(6) (see text and notes 10-13): s 140(8).

10 Legal Services Act 2007 s 140(6)(a).

11 Legal Services Act 2007 s 140(6)(b).

12 Legal Services Act 2007 s 140(6)(c).

13 Legal Services Act 2007 s 140(6).

14 Legal Services Act 2007 s 140(7). As to notices generally see PARA 303 note 11.

15 Legal Services Act 2007 s 140(9). Such a certificate purporting to be signed by an ombudsman is to be taken to have been duly signed unless the contrary is shown: s 140(10).

UPDATE

476 Acceptance or rejection of determination

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 140(6)(c) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(C) Determinations under the Scheme/477. Enforcement by complainant of directions.

477. Enforcement by complainant of directions.

As from a day to be appointed the following provisions have effect¹. The following provisions apply where a determination is made in respect of a complaint under the ombudsman scheme², one or more directions have been made³ and the determination is final⁴. An amount payable in accordance with:

- 339 (1) a direction⁵ which requires that the whole or part of any amount already paid by or on behalf of the complainant⁶ in respect of the fees be refunded⁷; or
- 340 (2) a direction for compensation to be paid⁸,

including any interest payable⁹, is recoverable, if a court¹⁰ so orders on the application of the complainant or an ombudsman¹¹, as if it were payable under an order of that court¹².

If the respondent¹³ fails to comply with any other direction under certain provisions of the Legal Services Act 2007¹⁴ the complainant or an ombudsman may make an application¹⁵ to the court for enforcement¹⁶.

1 The Legal Services Act 2007 s 141 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the 'ombudsman scheme' see PARA 465.

3 Ie one or more directions are made under the Legal Services Act 2007 s 137(2) (see PARA 475).

4 Legal Services Act 2007 s 141(1). As to where a determination is final see s 140(4); and PARA 476.

5 Ie a direction under the Legal Services Act 2007 s 137(2)(b) (see PARA 475).

6 As to the meaning of 'complainant' see PARA 465 note 7.

7 Legal Services Act 2007 s 141(2)(a).

8 Legal Services Act 2007 s 141(2)(b). The direction referred to in the text is a direction under s 137(2)(c) (see PARA 475).

9 Ie interest payable under the Legal Services Act 2007 s 137(4) (see PARA 475).

10 For these purposes 'court' means the High Court or a county court: Legal Services Act 2007 s 141(7).

11 As to the meaning of 'ombudsman' see PARA 487 note 4. An ombudsman may make an application under the Legal Services Act 2007 s 141(2) only in such circumstances as may be specified in scheme rules, and with the complainant's consent: s 141(5).

12 Legal Services Act 2007 s 141(2). If the court makes an order under s 141(2) on the application of an ombudsman, the ombudsman may in such circumstances as may be specified in scheme rules and with the complainant's consent recover the amount mentioned in that subsection on behalf of the complainant: s 141(6).

13 As to the meaning of 'respondent' see PARA 466 note 3.

14 Ie under the Legal Services Act 2007 s 137(2) (see PARA 475).

15 le an application under the Legal Services Act 2007 s 141. An ombudsman may make an application under s 141(3) only in such circumstances as may be specified in scheme rules, and with the complainant's consent: s 141(5).

16 Legal Services Act 2007 s 141(3). If, on an application under s 141(3), the court decides that the respondent has failed to comply with the direction in question, it may order the respondent to take such steps as the court directs for securing that the direction is complied with: s 141(4). As to the meaning of 'court' see PARA 302 note 13.

UPDATE

477 Enforcement by complainant of directions

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 141(5)-(7) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(C) Determinations under the Scheme/478. Reporting orders.

478. Reporting orders.

As from a day to be appointed the following provisions have effect¹. Where a court makes an order enforcing directions² it must give the Office for Legal Complaints³ notice to that effect⁴. Where the order is made against a person who is an authorised person in relation to any activity which is a reserved legal activity⁵, the Office for Legal Complaints must make arrangements to ensure that an ombudsman⁶ gives to each relevant authorising body⁷, in relation to that person, a report which states that the order has been made⁸.

1 The Legal Services Act 2007 s 142 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 ie an order under the Legal Services Act 2007 141 (see PARA 477).

3 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442. As to the meaning of 'court' see PARA 302 note 13.

4 Legal Services Act 2007 s 142(1). As to notices generally see PARA 303 note 11.

5 As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515. As to the meaning of 'reserved legal activity' see PARA 512.

6 As to the meaning of 'ombudsman' see PARA 465.

7 As to the meaning of 'relevant authorising body' see PARA 467 note 7.

8 Legal Services Act 2007 s 142(2). A report under s 142(2) may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report under s 142(2) and the reasons for that action being taken: s 142(3). If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under s 142(3), or any failure to comply with such a requirement, considers that there has been a serious failure by the relevant authorising body to discharge its regulatory functions or if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions, the ombudsman may make a report to that effect to the Legal Services Board: s 142(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/479. Duties to share information.

(D) INFORMATION

479. Duties to share information.

As from a day to be appointed the following provisions have effect¹. Scheme rules² must make provision requiring the Office for Legal Complaints³, an ombudsman⁴ and a member of the Office's staff⁵ to disclose to an approved regulator⁶ information of such description as may be specified in the rules, in such circumstances as may be so specified⁷.

The regulatory arrangements⁸ of an approved regulator must make provision requiring the approved regulator to disclose to the Office for Legal Complaints, an ombudsman and a member of the Office's staff information of such description as may be specified in the arrangements, in such circumstances as may be so specified⁹.

Provision made under the above provisions¹⁰ must satisfy such requirements as the Legal Services Board may, from time to time, specify¹¹ and in specifying such requirements the Board must have regard to the need to ensure that, so far as reasonably practicable:

- 341 (1) duplication of investigations is avoided¹²;
- 342 (2) the Office for Legal Complaints assists approved regulators to carry out their regulatory functions, and approved regulators assist with the investigation, consideration and determination of complaints under the ombudsman scheme¹³.

1 The Legal Services Act 2007 s 144 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'scheme rules' see PARA 465 note 9.

3 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

4 As to the meaning of 'ombudsman' see PARA 487 note 4.

5 Ie a member of staff appointed under the Legal Services Act 2007 Sch 15 para 13 (see PARA 451).

6 As to the meaning of 'approved regulator' see PARA 358.

7 Legal Services Act 2007 s 144(1), (3). The Office must before publishing under s 205(2) (see PARAS 318, 461) a draft of rules it proposes to make under s 144(1), consult each approved regulator to which the proposed rules apply and when seeking the Board's consent to such rules under s 155 (see PARA 472), identify any objections made by an approved regulator to the rules and not withdrawn: s 144(7).

8 As to the meaning of 'regulatory arrangements' see PARA 377.

9 Legal Services Act 2007 s 144(2), (3).

10 Ie under the Legal Services Act 2007 s 144(1), (2). An approved regulator must consult the Office for Legal Complaints before making provisions in its regulatory arrangements of the kind mentioned in s 144(2) and where an application is made for the Legal Services Board's approval of such provisions, identify any objections made by the Office to the provisions and not withdrawn: s 144(8). As to the Legal Services Board see s 2; and PARAS 303-326.

11 Legal Services Act 2007 s 144(4). The Board must publish any requirements specified by it under s 144(4): s 144(6).

12 Legal Services Act 2007 s 144(5)(a).

13 Legal Services Act 2007 s 144(5)(b). Section 144 applies to the Board in its capacity as a licensing authority and licensing rules made by the Board as it applies to an approved regulator and its regulatory arrangements; and for this purpose the reference in s 144(5)(b) to 'regulatory functions' is to be read as a reference to the Board's functions under its licensing rules: s 144(9). As to the meaning of 'regulatory functions' see PARA 301 note 4. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to the meaning of 'licensing rules' see PARA 1498 and as to licensing rules generally see PARA 1498 et seq.

UPDATE

479 Duties to share information

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 144(1), (3)-(7) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/480. Information and documents.

480. Information and documents.

As from a day to be appointed the following provisions have effect¹. An ombudsman² may, by notice, require a party³ to a complaint under the ombudsman scheme⁴:

- 343 (1) to produce documents, or documents of a description, specified in the notice⁵; or
- 344 (2) to provide information, or information of a description, specified in the notice⁶.

The notice may require the information or documents to be provided or produced before the end of such reasonable period as may be specified in the notice and in the case of information, in such manner or form as may be so specified⁷.

An ombudsman may take copies of or extracts from a document produced and require the person producing the document to provide an explanation of it⁸.

If a person who is required to produce a document fails to do so, an ombudsman may require that person to state, to the best of that person's knowledge and belief, where the document is⁹.

1 The Legal Services Act 2007 s 147 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'ombudsman' see PARA 487 note 4.

3 For these purposes 'party', in relation to a complaint, means:

212 (1) the complainant (s 147(7)(a));

213 (2) the respondent (s 147(7)(b));

214 (3) any other person who in accordance with the scheme rules is to be regarded as a party to the complaint (s 147(c)).

As to the meaning of 'complainant' see PARA 465 note 7. As to the meaning of 'respondent' see PARA 466 note 3. As to notices generally see PARA 303 note 11. As to the meaning of 'scheme rules' see PARA 465 note 9.

4 As to the ombudsman scheme see PARA 465.

5 Legal Services Act 2007 s 147(1)(a). Section 147 applies only to information and documents the provision or production of which the ombudsman considers necessary for the determination of the complaint: s 147(3).

6 Legal Services Act 2007 s 147(1)(b). See note 5.

7 Legal Services Act 2007 s 147(2).

8 Legal Services Act 2007 s 147(4).

9 Legal Services Act 2007 s 147(5). No person may be required under s 147:

215 (1) to provide any information which that person could not be compelled to provide or give in evidence in civil proceedings before the High Court (s 147(6)(a)); or

216 (2) to produce any document which that person could not be compelled to produce in such proceedings (s 147(6)(b)).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/481. Failure to provide information or produce documents.

481. Failure to provide information or produce documents.

As from a day to be appointed the following provisions have effect¹. The following applies where an ombudsman² is of the opinion that an authorised person³ has failed to comply with the requirement⁴ to produce information and documents⁵. The ombudsman must give each relevant authorising body⁶, in relation to that person, a report which states that the ombudsman is of that opinion and gives details of the failure⁷. Such a report⁸ may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response and the reasons for that action being taken⁹.

If an ombudsman, having regard to any such report produced by the relevant authorising body¹⁰, or any failure to comply with such a requirement, considers:

- 345 (1) that there has been a serious failure by the relevant authorising body to discharge its regulatory functions¹¹; or
- 346 (2) if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions¹²,

the ombudsman may make a report to that effect to the Legal Services Board¹³.

1 The Legal Services Act 2007 s 148 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'ombudsman' see PARA 487 note 4.

3 For these purposes 'authorised person' means an authorised person in relation to any activity which is a reserved legal activity: Legal Services Act 2007 s 148(6). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'reserved legal activity' see PARA 512.

4 Ie a requirement imposed under the Legal Services Act 2007 s 147(1) (see PARA 480).

5 Legal Services Act 2007 s 148(1).

6 As to the meaning of 'relevant authorising body' see PARA 467 note 7.

7 Legal Services Act 2007 s 148(2). The duty imposed by s 148(2) is not affected by the withdrawal or abandonment of the complaint in relation to which the requirement was imposed under s 147(1): s 148(4).

8 Ie a report imposed under the Legal Services Act 2007 s 148(2).

9 Legal Services Act 2007 s 148(3).

10 Ie any report produced in compliance with a requirement imposed under the Legal Services Act 2007 s 148(3).

11 Legal Services Act 2007 s 148(5)(a). As to the meaning of 'regulatory functions' see PARA 301 note 4.

12 Legal Services Act 2007 s 148(5)(b).

13 Legal Services Act 2007 s 148(5). As to the Legal Services Board see s 2; and PARAS 303-326.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/482. Enforcement of requirement to provide information or produce documents.

482. Enforcement of requirement to provide information or produce documents.

As from a day to be appointed the following provisions have effect¹. The following applies where an ombudsman² is of the opinion that a person (the 'defaulter') has failed to comply with a requirement³ to provide information or produce documents⁴. The ombudsman may certify the defaulter's failure to comply with the requirement to the court⁵ and the court may inquire into the case so certified⁶.

If the court is satisfied that the defaulter has failed without reasonable excuse to comply with the requirement, it may deal with the defaulter and, in the case of a body, any manager of the body, as if that person were in contempt⁷.

1 The Legal Services Act 2007 s 149 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'ombudsman' see PARA 487 note 4.

3 Ie a requirement imposed under the Legal Services Act 147(1) (see PARA 480).

4 Legal Services Act 2007 s 149(1).

5 Legal Services Act 2007 s 149(2). For these purposes 'court' means the High Court: s 149(7).

6 Legal Services Act 2007 s 149(3). Where the defaulter is an authorised person in relation to any activity which is a reserved legal activity the ombudsman (the 'enforcing ombudsman') may not certify the defaulter's failure to the court until a report by that or another ombudsman has been made as required by s 148(2) (see PARA 481) and the enforcing ombudsman is satisfied that each relevant authorising body to whom such a report was made has been given a reasonable opportunity to take action in respect of the defaulter's failure and that the defaulter has continued to fail to provide the information or produce the documents to which the requirement under s 147 (see PARA 480) related: s 149(5), (6). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

7 Legal Services Act 2007 s 149(4). As to the meaning of 'manager' see PARA 369 note 17.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/483. Reports of investigations.

483. Reports of investigations.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may, if it considers it appropriate to do so in any particular case, publish a report of the investigation, consideration and determination of a complaint made under the ombudsman scheme³.

The report must not (unless the complainant⁴ consents) mention the name of the complainant or include any particulars which, in the opinion of the Office for Legal Complaints, are likely to identify the complainant⁵.

1 The Legal Services Act 2007 s 150 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 s 150(1). As to the ombudsman scheme see PARA 465.

4 As to the meaning of 'complainant' see PARA 465 note 7.

5 Legal Services Act 2007 s 150(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/484. Restricted information.

484. Restricted information.

As from a day to be appointed the following provisions have effect¹. Except as otherwise provided², restricted information³ must not be disclosed by a restricted person or by any person who receives the information directly or indirectly from a restricted person⁴.

1 The Legal Services Act 2007 s 151 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 le except as provided by the Legal Services Act 2007 s 152 (see PARA 485).

3 For the purposes of the Legal Services Act 2007 ss 151, 152 'restricted information' means information (other than excluded information) which is obtained by a restricted person in the course of, or for the purposes of, an investigation into a complaint made under the ombudsman scheme (including information obtained for the purposes of deciding whether to begin such an investigation or in connection with the settlement of a complaint): s 151(2). 'Restricted person' means the Office for Legal Complaints, an ombudsman or a person who exercises functions delegated under Sch 15 para 22: s 151(2). As to the Office for Legal Complaints see s 114; and PARA 442. For the purposes of s 151(2) 'excluded information' means:

217 (1) information which is in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it (s 151(3)(a));

218 (2) information which at the time of the disclosure is or has already been made available to the public from other sources (s 151(3)(b));

219 (3) information which was obtained more than 70 years before the date of the disclosure (s 151(3)(c)).

4 Legal Services Act 2007 s 151(1).

UPDATE

484-485 Restricted information, Disclosure of restricted information

These provisions in force for certain purposes 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/485. Disclosure of restricted information.

485. Disclosure of restricted information.

As from a day to be appointed the following provisions have effect¹. A restricted person may disclose restricted information² to another restricted person³. Restricted information may also be disclosed for the purposes of the investigation in the course of which, or for the purposes of which, it was obtained⁴. Furthermore the provisions preventing the disclosure of restricted information⁵ do not preclude the disclosure of restricted information⁶:

- 347 (1) in certain reports⁷;
- 348 (2) for the purposes of enabling or assisting the Legal Services Board⁸ to exercise any of its functions⁹;
- 349 (3) to an approved regulator¹⁰ for the purposes of enabling or assisting the approved regulator to exercise any of its regulatory functions¹¹;
- 350 (4) with the consent of the person to whom it relates and (if different) the person from whom the restricted person obtained it¹²;
- 351 (5) for the purposes of an inquiry with a view to the taking of any criminal proceedings or for the purposes of any such proceedings¹³;
- 352 (6) where the disclosure is required by or by virtue of any provision made by or under the Legal Services Act 2007 or any other enactment or other rule of law¹⁴;
- 353 (7) to such persons (other than approved regulators) who exercise regulatory functions as may be prescribed by order made by the Lord Chancellor, for such purposes as may be so prescribed¹⁵.

However, the Lord Chancellor may by order prevent the disclosure of restricted information by virtue of the above provisions¹⁶ in such circumstances, or for such purposes, as may be prescribed in the order¹⁷.

1 The Legal Services Act 2007 s 152 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'restricted person' and 'restricted information' see PARA 484 note 3.

3 Legal Services Act 2007 s 152(1).

4 Legal Services Act 2007 s 152(2). Section 152(2) is subject to s 152(5) (see text and notes 16-17): s 152(4).

5 ie the Legal Services Act 2007 s 151 (see PARA 484).

6 The Legal Services Act 2007 s 152(3) is subject to s 152(5) (see text and notes 16-17): s 152(4).

7 Legal Services Act 2007 s 152(3)(a). The reports mentioned in the text are reports made under ss 143(2) (see PARA 492), 146(2) (see PARA 493), 148 (see PARA 481), 150 (see PARA 483).

8 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

9 Legal Services Act 2007 s 152(3)(b).

10 As to the meaning of 'approved regulator' see PARA 358.

- 11 Legal Services Act 2007 s 152(3)(c). As to the meaning of 'regulatory functions' see PARA 301 note 4.
- 12 Legal Services Act 2007 s 152(3)(d).
- 13 Legal Services Act 2007 s 152(3)(e).
- 14 Legal Services Act 2007 s 152(3)(f).
- 15 Legal Services Act 2007 s 152(3)(g). At the date at which this volume states the law no such orders had been made.
- 16 Ie by virtue of the Legal Services Act 2007 s 152(2) or (3).
- 17 Legal Services Act 2007 s 152(5). At the date at which this volume states the law no such orders had been made.

UPDATE

484-485 Restricted information, Disclosure of restricted information

These provisions in force for certain purposes 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(D) Information/486. Defamation.

486. Defamation.

As from a day to be appointed the following provisions have effect¹. For the purposes of the law of defamation, proceedings in relation to a complaint under the ombudsman scheme are to be treated as if they were proceedings before a court², and the publication of any matter by the Office for Legal Complaints under certain provisions³ is absolutely privileged⁴.

1 The Legal Services Act 2007 s 154 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'court' see PARA 302 note 13.

3 See under the Legal Services Act 2007 Pt 6 (ss 112-161). As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

4 Legal Services Act 2007 s 154.

UPDATE

486 Defamation

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(E) Ombudsmen/487. Appointment of chief ombudsman.

(E) OMBUDSMEN

487. Appointment of chief ombudsman.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² must appoint a person to act as Chief Ombudsman for the purposes of the ombudsman scheme³. That person must be a lay person⁴ and his appointment as Chief Ombudsman ceases if he ceases to be a lay person⁵.

The person appointed must be a person appearing to the Office for Legal Complaints to have appropriate qualifications and experience to act as an ombudsman for the purposes of the ombudsman scheme⁶.

A person's appointment is to be on such terms and conditions (including terms as to the duration and termination of a person's appointment and as to remuneration) as the Office for Legal Complaints considers consistent with ensuring the independence of the person appointed and otherwise appropriate⁷.

The Chief Ombudsman is disqualified from membership of the House of Commons and the Northern Ireland Assembly⁸.

1 The Legal Services Act 2007 s 122 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 Legal Services Act 2007 s 122(1)(a). As to the ombudsman scheme see PARA 465.

4 Legal Services Act 2007 s 122(2). As to the meaning of 'lay person' see Sch 15 para 2(3); and PARA 443 (definition applied by s 122(10)). In the Legal Services Act 2007 a reference to an 'ombudsman' (except in the expressions 'ombudsman scheme', 'Chief Ombudsman' and 'assistant ombudsman') is a reference to the Chief Ombudsman or an assistant ombudsman: s 122(5). Appointment as an ombudsman does not confer the status of Crown servant: s 122(9).

5 Legal Services Act 2007 s 122(6).

6 Legal Services Act 2007 s 122(4).

7 Legal Services Act 2007 s 122(7).

8 See the House of Commons Disqualification Act 1975 Sch 1 Pt 3 and the Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt 3 (both prospectively amended by the Legal Services Act 2007 Sch 15 para 31).

UPDATE

487-489 Appointment of chief ombudsman ... Reports

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(E) Ombudsmen/488. Appointment of assistant ombudsmen.

488. Appointment of assistant ombudsmen.

As from a day to be appointed the following provisions have effect¹. The Office for Legal Complaints² may, with the consent of the Chief Ombudsman³, appoint one or more other persons to act as assistant ombudsmen for the purposes of the ombudsman scheme⁴. It is a condition of such an appointment that the person appointed must not during the appointment carry on any activity which is a reserved legal activity for or in expectation of any fee, gain or reward⁵ and the terms and conditions on which a person is appointed as an assistant ombudsman must specify the consequences of such a breach⁶. Subject to that, a person's appointment as an ombudsman is to be on such terms and conditions (including terms as to the duration and termination of a person's appointment and as to remuneration) as the Office for Legal Complaints considers consistent with ensuring the independence of the person appointed and otherwise appropriate⁷.

The person appointed must be a person appearing to the Office for Legal Complaints to have appropriate qualifications and experience to act as an ombudsman for the purposes of the ombudsman scheme⁸.

The assistant ombudsman is disqualified from membership of the House of Commons and the Northern Ireland Assembly⁹.

1 The Legal Services Act 2007 s 122 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Office for Legal Complaints see the Legal Services Act 2007 s 114; and PARA 442.

3 As the appointment of the Chief Ombudsman see PARA 487.

4 Legal Services Act 2007 s 122(1)(b). As to the ombudsman scheme see PARA 465.

5 Legal Services Act 2007 s 122(3).

6 Legal Services Act 2007 s 122(7).

7 Legal Services Act 2007 s 122(8). Appointment as an ombudsman does not confer the status of Crown servant: s 122(9).

8 Legal Services Act 2007 s 122(4).

9 See the House of Commons Disqualification Act 1975 Sch 1 Pt 3 and the Northern Ireland Assembly Disqualification Act 1975 Sch 1 Pt 3 (both prospectively amended by the Legal Services Act 2007 Sch 15 para 31).

UPDATE

487-489 Appointment of chief ombudsman ... Reports

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(E) Ombudsmen/489. Reports.

489. Reports.

As from a day to be appointed the following provisions have effect¹. The Chief Ombudsman² must prepare a report for each financial year on the discharge of the functions of the ombudsmen³. The report must comply with any requirements specified by the Office for Legal Complaints⁴ and, as soon as reasonably practicable after the end of each financial year⁵, the Chief Ombudsman must give the Office for Legal Complaints a copy of the report prepared for the year⁶.

The Office for Legal Complaints may require the Chief Ombudsman to prepare and give the Office, within a specified period, a report in respect of any specified matter relating to the functions of the ombudsman⁷.

1 The Legal Services Act 2007 ss 123, 124 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the appointment of the Chief Ombudsman see PARA 487.

3 Legal Services Act 2007 s 123(1). As to the meaning of 'ombudsman' see PARA 487 note 4.

4 Legal Services Act 2007 s 123(2). As to the Office for Legal Complaints see s 114; and PARA 442. The Office for Legal Complaints must publish any requirements specified for the purposes of s 123(2): s 123(3).

5 As to the meaning of 'financial year' see the Legal Services Act 2007 s 118(7); PARA 303 note 11 (definition applied by s 123(5)).

6 Legal Services Act 2007 s 123(4).

7 Legal Services Act 2007 s 124(1). For these purposes 'specified' means specified in the requirement: s 124(2).

UPDATE

487-489 Appointment of chief ombudsman ... Reports

These provisions in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(E) Ombudsmen/490. Delegation of ombudsman's functions.

490. Delegation of ombudsman's functions.

As from a day to be appointed the following provisions have effect¹. An ombudsman² may delegate to a member of the Office for Legal Complaints staff³:

- 354 (1) any function of the ombudsman in relation to the making, investigation or consideration of a complaint⁴;
- 355 (2) any other function conferred on the ombudsman⁵.

However this does not apply to the function of determining a complaint, the function of deciding that a complaint should be dismissed⁶, the Chief Ombudsman's⁷ power to consent to the appointment of an assistant ombudsman⁸, or the duties imposed on the Chief Ombudsman⁹ (Chief Ombudsman's report)¹⁰.

1 The Legal Services Act 2007 s 134 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'ombudsman' see PARA 487 note 4.

3 Ie staff appointed under the Legal Services Act 2007 Sch 15 para 13 (see PARA 451).

4 Legal Services Act 2007 s 134(1)(a).

5 Legal Services Act 2007 s 134(1)(b). The functions mentioned in the text are functions conferred on the ombudsman under Pt 6 (ss 112-161).

6 Ie dismissed by virtue of the Legal Services Act 2007 s 133(3)(a) (see PARA 471).

7 As to the appointment of a Chief Ombudsman see PARA 487.

8 Ie under the Legal Services Act 2007 s 122 (see PARA 488).

9 Ie the duties imposed by the Legal Services Act 2007 s 123 (see PARA 489).

10 Legal Services Act 2007 s 134(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(E) Ombudsmen/491. Notification.

491. Notification.

As from a day to be appointed the following provisions have effect¹. Where a complaint is:

- 356 (1) excluded² from the jurisdiction of the ombudsman scheme³;
- 357 (2) dismissed, or referred to another body, by virtue of scheme rules⁴;
- 358 (3) settled, withdrawn or abandoned (or treated as withdrawn or abandoned by virtue of scheme rules)⁵,

the ombudsman⁶ must notify the complainant, the respondent, and any relevant authorising body⁷, in relation to the respondent, notified of the complaint in accordance with rules⁸, and in a case under head (1) or (2) above must give reasons for the exclusion, dismissal or referral⁹.

¹ The Legal Services Act 2007 s 135 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² Ie excluded under the Legal Services Act 2007 s 126 (see PARA 467) or by virtue of the scheme rules under s 127 (see PARA 467). As to the ombudsman scheme see PARA 465.

³ Legal Services Act 2007 s 135(1)(a).

⁴ Legal Services Act 2007 s 135(1)(b).

⁵ Legal Services Act 2007 s 135(1)(c).

⁶ As to the meaning of 'ombudsman' see PARA 487 note 4.

⁷ As to the meaning of 'complainant' see PARA 465 note 7. As to the meaning of 'relevant authorising body' see PARA 467 note 7. As to the meaning of 'respondent' see PARA 466 note 3.

⁸ Ie rules notified in accordance with rules within the Legal Services Act 2007 s 133(3)(k) (see PARA 471).

⁹ Legal Services Act 2007 s 135(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/1. REGULATION OF THE LEGAL PROFESSIONS/(6) COMPLAINTS AND DISCIPLINE/(iv) Office for Legal Complaints/C. OMBUDSMAN SCHEME/(E) Ombudsmen/492. Reporting misconduct.

492. Reporting misconduct.

As from a day to be appointed the following provisions have effect¹. The following applies where:

- 359 (1) an ombudsman² is dealing, or has dealt, with a complaint under the ombudsman scheme³; and
- 360 (2) the ombudsman is of the opinion that the conduct of the respondent⁴ or any other person in relation to any matter connected with the complaint is such that a relevant authorising body⁵ in relation to that person should consider whether to take action against that person⁶.

The ombudsman must give the relevant authorising body a report which states that the ombudsman is of that opinion and gives details of that conduct⁷. The report may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report and the reasons for that action being taken⁸.

¹ The Legal Services Act 2007 s 143 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the meaning of 'ombudsman' see PARA 487 note 4.

³ Legal Services Act 2007 s 143(1)(a). As to the ombudsman scheme see PARA 465.

⁴ As to the meaning of 'respondent' see PARA 466 note 3.

⁵ As to the meaning of 'relevant authorising body' see PARA 467 note 7.

⁶ Legal Services Act 2007 s 143(1)(b).

⁷ Legal Services Act 2007 s 143(2). The ombudsman must give the complainant a notice stating that a report under s 143(2) has been given to the relevant authorising body: s 143(3). As to the meaning of 'complainant' see PARA 465 note 7. The duty imposed by s 143(2) is not affected by the withdrawal or abandonment of the complaint: s 143(5). As to notices generally see PARA 303 note 11.

⁸ Legal Services Act 2007 s 143(4). If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under s 143(4), or any failure to comply with such a requirement, considers that there has been a serious failure by the relevant authorising body to discharge its regulatory functions or if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions, the ombudsman may make a report to that effect to the Board: s 143(6).

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493. Reporting failures to co-operate with an investigation.

As from a day to be appointed the following provisions have effect¹. The following apply where an ombudsman² is of the opinion that an authorised person³ has failed to give an ombudsman all such assistance requested by the ombudsman, in connection with the investigation, consideration or determination of a complaint under the ombudsman scheme, as that person is reasonably able to give⁴.

The ombudsman must give each relevant authorising body, in relation to that person, a report which states that the ombudsman is of that opinion and gives details of the failure⁵. The report may require the relevant authorising body to report to the ombudsman the action which has been or is to be taken by it in response to the report and the reasons for that action being taken⁶.

1 The Legal Services Act 2007 s 146 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'ombudsman' see PARA 487 note 4.

3 For the purposes of the Legal Services Act 2007 s 146 'authorised person' means an authorised person in relation to any activity which is a reserved legal activity: see s 146(6). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'reserved legal activity' see PARA 512.

4 Legal Services Act 2007 s 146(1).

5 Legal Services Act 2007 s 146(2). The duty imposed by s 146(2) is not affected by the withdrawal or abandonment of the complaint: s 146(4).

6 Legal Services Act 2007 s 146(3). If an ombudsman, having regard to any report produced by the relevant authorising body in compliance with a requirement imposed under s 146(3), or any failure to comply with such a requirement, considers:

220 (1) that there has been a serious failure by the relevant authorising body to discharge its regulatory functions (s 146(5)(a)); or

221 (2) if such a requirement has been imposed on the body on more than one occasion, that the relevant authorising body has persistently failed adequately to discharge its regulatory functions (s 146(5)(b)),

the ombudsman may make a report to that effect to the Board: s 146(5).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(1) INTRODUCTION/494. Introduction.

2. THE PROVISION OF LEGAL SERVICES

(1) INTRODUCTION

494. Introduction.

Until a day to be appointed¹ the right to carry out certain legal activities² is governed by provisions of the Courts and Legal Services Act 1990³. However, as from a day to be appointed⁴ the right to carry out certain legal services is mainly governed by provisions of the Legal Services Act 2007⁵. Until those provisions come into force⁶, a not for profit body, a community interest company or an independent trade union is entitled to carry on any activity which is a reserved legal activity⁷. Furthermore⁸ provision is also made⁹ for certain persons to be deemed to be authorised by approved regulators to carry on certain activities¹⁰.

1 The Courts and Legal Services Act 1990 ss 27-31A are repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(d), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie the right of audience and the right to conduct litigation. As to the meanings of 'right to conduct litigation' and the 'right of audience' see PARA 495 notes 3, 4.

3 Ie the Courts and Legal Services Act 1990 ss 27-31A (see PARA 495 et seq).

4 The Legal Services Act 2007 Pt 3 (ss 12-26) is mainly to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. As to the Lord Chancellor see PARA 301 note 1.

5 See PARA 509 et seq. Provision is made for the continuity of existing rights: see the Legal Services Act 2007 Sch 5 paras 1, 2; and PARA 515.

6 Ie during a transitional period which is the period which begins with the day appointed for the coming into force of the Legal Services Act 2007 s 13 (see PARA 509) and ends with the day appointed by the Lord Chancellor by order for the purposes of s 23: s 23(3). Different days made be appointed for different purposes but an order may be made only on the recommendation of the Legal Services Board: s 23(4), (5). At the date at which this volume states the law no such day had been appointed. As to the Legal Services Board see s 2; and PARAS 303-326.

7 Legal Services Act 2007 s 23(1), (2). As to the meaning of 'reserved legal activity' see PARA 512.

8 Ie until the coming into force of the Legal Services Act 2007 s 13 (see PARA 509): see Sch 5 para 19; and PARA 578.

9 Ie under the Legal Services Act 2007 Sch 5.

10 See the Legal Services Act 2007 s 22. As to the meaning of 'approved regulator' see PARA 358.

UPDATE

494 Introduction

TEXT AND NOTES--See Provision of Services Regulations 2009, SI 2009/2999; and **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) PARA 385A.

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 21 para 83 is 31 March 2009: SI 2009/503. Day appointed in relation to Legal Services Act 2007 Sch 21 para 84(d) is 1 January 2010: SI 2009/3250.

NOTES 6, 10--Legal Services Act 2007 ss 22, 23 in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/495. The statutory objective and the general principle.

(2) PROVISION OF LEGAL SERVICES UNDER THE

495. The statutory objective and the general principle.

Until a day to be appointed the following provisions apply¹. The statutory objective of Part II of the Courts and Legal Services Act 1990² is the development of legal services in England and Wales (and in particular the development of advocacy³, litigation⁴, conveyancing⁵ and probate services⁶) by making provision for new or better ways of providing such services and a wider choice of persons providing them, while maintaining the proper and efficient administration of justice⁷.

As a general principle, the question of whether a person should be granted a right of audience or a right to conduct litigation in relation to any court or proceedings should be determined only by reference to whether:

- 361 (1) he is qualified in accordance with the educational and training requirements appropriate to the court or proceedings⁸;
- 362 (2) he is a member⁹ of a professional or other body which has rules of conduct¹⁰ governing the conduct of its members, has an effective mechanism for enforcing those rules and is likely to enforce them¹¹;
- 363 (3) in the case of a body whose members are or will be providing advocacy services, the rules of conduct make satisfactory provision in relation to the court or proceedings in question requiring any such member not to withhold those services¹²;

1

- 1. (a) on the ground that the nature of the case is objectionable to him or to any section of the public;
- 2. (b) on the ground that the conduct, opinions or beliefs of the prospective client are unacceptable to him or to any section of the public;
- 3. (c) on any ground relating to the source of any financial support which may properly be given to the prospective client¹³ for the proceedings in question¹⁴; and

2

- 364 (4) in relation to the court or proceedings the rules of conduct are appropriate in the interests of the proper and efficient administration of justice¹⁵.

1 The Courts and Legal Services Act 1990 s 17 is repealed (and s 119(1) is amended so as to repeal the definition of 'statutory objective') by the Legal Services Act 2007 Sch 21 paras 83, 84(a), 97(1), (2), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Courts and Legal Services Act 1990 Pt II (ss 17-70): see the text and notes 3-15. See also PARA 496 et seq.

3 'Advocacy services' means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide: Courts and Legal Services Act 1990 s 119(1). 'Right of audience' means the right to appear before and address a court including the right to call and examine witnesses: s 119(1) (amended by the Access to Justice Act 1999 Sch 6 paras 4, 10(1), (3)). 'Proceedings' means proceedings in any court: Courts and Legal Services Act 1990 s 119(1). As to the meaning of 'court' see PARA 426 note 12.

4 'Litigation services' means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide: Courts and Legal Services Act 1990 s 119(1). 'Right to conduct litigation' means the right:

222 (1) to issue proceedings before any court (s 119(1) (amended by the Access to Justice Act 1999 Sch 6 paras 4, 10(1), (3))); and

223 (2) to perform any ancillary functions in relation to proceedings, such as entering appearances to actions (Courts and Legal Services Act 1990 s 119(1)).

As from a day to be appointed head (1) above is amended by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (5) to apply to the issuing of proceedings in any court in England and Wales and the definition of the 'right to conduct litigation' also includes the right to commence, prosecute and defend such proceedings. At the date at which this volume states the law no such day had been appointed.

5 'Conveyancing services' means the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land: Courts and Legal Services Act 1990 s 119(1). For the purposes of the definition of conveyancing services, 'disposition' does not include a testamentary disposition or any disposition in the case of such a lease as is referred to in the Law of Property Act 1925 s 54(2) (short leases) but, subject to that, includes in the case of leases both their grant and their assignment; and 'acquisition' has a corresponding meaning: Courts and Legal Services Act 1990 s 119(2).

6 As to the meaning of 'probate services' see para 427 note 5.

7 Courts and Legal Services Act 1990 s 17(1), (2) (prospectively repealed: see note 1).

8 Courts and Legal Services Act 1990 s 17(3)(a) (prospectively repealed: see note 1). As to the education and training of solicitors see PARA 646 et seq. As to the education and training of barristers see PARA 1060 et seq.

9 As to the meaning of 'member' see PARA 351 note 3.

10 Ie however described: Courts and Legal Services Act 1990 s 17(3)(b)(i) (prospectively repealed: see note 1). For these purposes, any references to rules of conduct include a reference to rules of practice: s 119(3).

11 Courts and Legal Services Act 1990 s 17(3)(b) (prospectively repealed: see note 1).

12 Rules of conduct which allow a member of the body in question to withhold his services if there are reasonable grounds for him to consider that, having regard to the circumstances of the case, the nature of his practice or his experience and standing, he is not being offered a proper fee, are not on that account to be taken as being incompatible with the principle set out in Courts and Legal Services Act 1990 s 17(3) ('general principle'): ss 17(4), (5), 119(1) (prospectively amended and repealed: see note 1).

13 Eg on the ground that such support will be available under the Legal Aid Act 1988 (see generally **LEGAL AID**): Courts and Legal Services Act 1990 s 17(3)(c)(iii) (prospectively repealed: see note 1).

14 Courts and Legal Services Act 1990 s 17(3)(c) (prospectively repealed: see note 1).

15 Courts and Legal Services Act 1990 s 17(3)(d) (prospectively repealed: see note 1).

UPDATE

495-498 The statutory objective and the general principle ... Right to conduct litigation

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/496. The statutory duty.

496. The statutory duty.

Until a day to be appointed the following provisions have effect¹. Any person called upon to exercise any functions conferred by Part II of the Courts and Legal Services Act 1990² with respect to:

- 365 (1) the granting of rights of audience³;
- 366 (2) the granting of rights to conduct litigation⁴;
- 367 (3) the approval or alteration of qualification regulations or rules of conduct⁵; or
- 368 (4) the giving of advice with respect to any matter mentioned in heads (1) to (3) above⁶,

must exercise those functions as soon as is reasonably practicable and consistent with the statutory provisions conferring those functions⁷.

A person exercising any such functions must act in accordance with the general principle⁸ and, subject to that, must so far as it is possible to do so in the circumstances of the case, act to further the statutory objective⁹ and not act in any way which would be incompatible with that objective¹⁰.

1 The Courts and Legal Services Act 1990 s 18 is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(a), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie the Courts and Legal Services Act 1990 Pt II (ss 17-70): see PARAS 495, 497 et seq.

3 Courts and Legal Services Act 1990 s 18(1)(a) (prospectively repealed: see note 1). As to the meaning of 'right of audience' see PARA 495 note 3.

4 Courts and Legal Services Act 1990 s 18(1)(b) (prospectively repealed: see note 1). As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

5 Courts and Legal Services Act 1990 s 18(1)(c) (amended by the Access to Justice Act 1999 Sch 6, paras 4, 5(1), (2); and prospectively repealed: see note 1)). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to any right of audience or proposed right of audience see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to the right to conduct litigation or proposed right to conduct litigation see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules' in relation to a body see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

6 Courts and Legal Services Act 1990 s 18(1)(d) (prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 s 18(1) (prospectively repealed: see note 1).

8 As to the meaning of 'general principle' see PARA 495. Where any person other than the Secretary of State is called upon to exercise any such functions, the Secretary of State may require him to do so within such time as the Secretary of State may reasonably specify: Courts and Legal Services Act 1990 s 18(1A) (added by the Access to Justice Act 1999 Sch 6 paras 4, 5(1), (3); amended by SI 2003/1887; and prospectively repealed: see note 1).

9 As to the meaning of 'statutory objective' see the Courts and Legal Services Act 1990 s 17(2) (prospectively repealed); and PARA 495 (definition applied by s 119(1) (application of definition prospectively repealed by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (2), Sch 23)). At the date at which this volume states the law no such day had been appointed.

10 Courts and Legal Services Act 1990 s 18(2) (prospectively repealed: see note 1).

UPDATE

495-498 The statutory objective and the general principle ... Right to conduct litigation

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/497. General grounds for determining the exercise of rights of audience.

497. General grounds for determining the exercise of rights of audience.

Until a day to be appointed the following provisions have effect¹. The question whether a person has a right of audience² before a court³ or in relation to any proceedings⁴ is to be determined solely in accordance with the provisions of Part II⁵ of the Courts and Legal Services Act 1990⁶.

A person has a right of audience before a court in relation to any proceedings only in the following cases:

- 369 (1) where he has a right of audience before that court in relation to those proceedings granted by the appropriate authorised body⁷, and that body's qualification regulations⁸ and rules of conduct⁹ have been approved for the purposes of these provisions in relation to that right¹⁰;
- 370 (2) where head (1) above does not apply but he has a right of audience before that court in relation to those proceedings granted by or under any enactment¹¹;
- 371 (3) where head (1) above does not apply but he has a right of audience granted by that court in relation to those proceedings¹²;
- 372 (4) where he is a party to the proceedings and would have had a right of audience, in his capacity as such a party, had the 1990 Act not been passed¹³; or
- 373 (5) where he is employed¹⁴ or is otherwise engaged to assist in the conduct of litigation and is doing so under instruction given¹⁵ by a qualified litigator¹⁶ and the proceedings are being heard in chambers in the High Court or a county court and are not reserved family proceedings¹⁷.

Every person who exercises before any court a right of audience granted by an authorised body has:

- 374 (a) a duty to the court to act with independence in the interests of justice¹⁸; and
- 375 (b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of the rights of audience¹⁹;

and those duties must override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them²⁰.

Nothing in these provisions affects the power of any court in any proceedings to refuse to hear a person, for reasons which apply to him as an individual, who would otherwise have a right of audience before the court in relation to those proceedings²¹; but where a court so refuses to hear a person it must give its reason for refusing²².

Where a court does not permit²³ the appearance of advocates²⁴, or permits their appearance only with leave, no person has a right of audience before that court in relation to any proceedings solely by virtue of these provisions²⁵.

Certain statutory provisions relating to unqualified persons²⁶ do not apply in relation to any act done in the exercise of a right of audience²⁷.

1 The Courts and Legal Services Act 1990 s 27 is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(a), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'right of audience' see PARA 495 note 3.

3 As to the meaning of 'court' see PARA 426 note 12.

4 As to the meaning of 'proceedings' see PARA 495 note 3.

5 In the Courts and Legal Services Act 1990 Pt II (ss 17-70): see PARAS 495, 497 et seq.

6 Courts and Legal Services Act 1990 s 27(1). As to the general principle governing the grant of rights of audience and the statutory duty of those exercising the function of granting such rights see ss 17, 18; and PARAS 495-496. As to the offences of acting in the purported exercise of a right of audience or pretending to be entitled to exercise rights of audience see PARAS 584-585. The Restrictive Practices Court Act 1976 s 8 (prospectively repealed by the Competition Act 1998 Sch 14 Pt 1) gives a right of audience before the restrictive practices court but this court no longer functions.

7 For these purposes, 'authorised body' means:

224 (1) the Bar Standards Board (see PARA 1049) (Courts and Legal Services Act 1990 s 27(9));

225 (2) the Solicitors Regulation Authority (see PARA 619 et seq) (s 27(9)); and

226 (3) any professional or other body which has been designated by Order in Council as an authorised body for such purposes (s 27(9)).

The wording in the Courts and Legal Services Act 1990 s 27(9) in head (1) above refers to the General Council of the Bar, and in head (2) above refers to the Law Society. However in practice the body responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049), and the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619 et seq). 'Appropriate authorised body', in relation to any person claiming to be entitled to any right of audience by virtue of s 27(2)(a) (see head (1) in the text) means the authorised body granting that right and of which that person is a member: s 27(9). As to the meaning of 'member' see PARA 351 note 3. Any person (including a barrister or solicitor) who has a right of audience granted by an authorised body in accordance with the provisions of the Courts and Legal Services Act 1990 is referred to therein as an 'authorised advocate': see s 119(1) (definition prospectively repealed by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (2), Sch 23). As to the meaning of 'barrister' see PARA 1033 and as to barristers generally see PARA 1033 et seq. As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq. An authorised advocate may be entitled to examine any witness at an inquest: see the Coroners Rules 1984, SI 1984/552, r 20(1); and **CORONERS** vol 9(2) (2006 Reissue) PARA 1023.

8 For these purposes, 'qualification regulations', in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to, or to exercise, any right of audience granted by it: Courts and Legal Services Act 1990 s 27(9). As to the education and training of solicitors see PARA 646 et seq.

9 For these purposes, 'rules of conduct', in relation to an authorised body, means rules (however they may be described) as to the conduct required of members of that body in exercising any right of audience granted by it: Courts and Legal Services Act 1990 s 27(9). In any Act any reference to rules of conduct (including until a day to be appointed those references in ss 27(9), 28(5) and as from a day to be appointed the Legal Services Act 2007 s 21 (see PARA 377)) includes a reference to rules of practice: Courts and Legal Services Act 1990 s 119(3) (prospectively amended by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (6)). At the date at which this volume states the law no such day had been appointed. As to rules of conduct generally see PARA 495.

10 Courts and Legal Services Act 1990 s 27(2)(a) (amended by the Access to Justice Act 1999 Sch 6 paras 4, 6(1), (2), Sch 15 Pt II).

11 Courts and Legal Services Act 1990 s 27(2)(b). As to enactments which grant rights of audience in particular courts or tribunals see eg:

227 (1) the Agricultural Marketing (Public Inquiry) Rules 1949, SI 1949/2094, r 6; and **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) PARA 1087;

228 (2) the Mines and Quarries Act 1954 s 170(3). As to coalmining generally see **MINES, MINERALS AND QUARRIES**;

- 229 (3) the Valuation and Community Charge Tribunals Regulations 1989, SI 1989/439, regs 24, 43; and **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARAS 357, 362;
 - 230 (4) the Land Powers (Defence) Act (Inquiries) Rules 1958, SI 1958/2231, r 8(2); and **ARMED FORCES** vol 2(2) (Reissue) PARA 103;
 - 231 (5) the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375, r 6(3); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 989;
 - 232 (6) the Electricity (Compulsory Wayleaves) (Hearings Procedure) Rules 1967, SI 1967/450, r 5(2); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1293;
 - 233 (7) the Commons Commissioners Regulations 1971, SI 1971/1727, reg 20. As to the Commissioners see **COMMONS** vol 13 (2009) PARA 425;
 - 234 (8) the Industrial Training (Levy Exemption References) Regulations 1974, SI 1974/1335, reg 6, Sch r 7; and **EMPLOYMENT** vol 40 (2009) PARA 624;
 - 235 (9) the Rent Assessment Committees (England and Wales) (Rent Tribunal) Regulations 1980, SI 1980/1700, reg 6; and **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) PARA 995;
 - 236 (10) the Highways (Inquiries Procedure) Rules 1994, SI 1994/3263, r 13(3); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 918;
 - 237 (11) the Pipe Lines (Inquiries Procedure) Rules 1995, SI 1995/1239, r 10(3); and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 606;
 - 238 (12) the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 11(3); the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 15(3); and **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 664;
 - 239 (13) the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, SI 2003/2099, reg 14(7)(b) (in relation to England); and the Leasehold Valuation Tribunals (Procedure) (Wales) Regulations 2004, SI 2004/681, reg 14(7)(b) (in relation to Wales); and **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 67;
 - 240 (14) the Compulsory Purchase (Inquiries Procedure) Rules 2007, SI 2007/3617, r 14(4); and **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 594.
- 12 Courts and Legal Services Act 1990 s 27(2)(c).
- 13 Courts and Legal Services Act 1990 s 27(2)(d).
- 14 Ie whether wholly or in part: Courts and Legal Services Act 1990 s 27(2)(e)(i).
- 15 Ie either generally or in relation to the proceedings: Courts and Legal Services Act 1990 s 27(2)(e)(i).
- 16 For these purposes, 'qualified litigator' means:
- 241 (1) any practising solicitor (ie one who has a practising certificate in force or is employed wholly or mainly for the purpose of providing legal services to his employer (Courts and Legal Services Act 1990 s 27(9) (amended by the Access to Justice Act 1999 Sch 6 paras 4, 6(1), (4) (b)));
 - 242 (2) any recognised body (ie any body recognised under the Administration of Justice Act 1985 s 9 (incorporated practices: see PARA 688)) (Courts and Legal Services Act 1990 s 27(9)); and
 - 243 (3) any person who is exempt from the requirement to hold a practising certificate by virtue of the Solicitors Act 1974 s 88 (saving for solicitors to public departments and the City of London: see PARA 642) (Courts and Legal Services Act 1990 s 27(9)).
- 17 Courts and Legal Services Act 1990 s 27(2)(e). For these purposes, 'family proceedings' has the same meaning as in the Matrimonial and Family Proceedings Act 1984 and includes any other proceedings which are family proceedings for the purposes of the Children Act 1989; and 'reserved family proceedings' means such category of family proceedings as the Secretary of State may, after consulting the president of the Law Society and with the concurrence of the President of the Family Division, by order prescribe: Courts and Legal Services

Act 1990 s 27(9) (amended by SI 2003/1887). At the date at which this volume states the law, no such order had been made.

18 Courts and Legal Services Act 1990 s 27(2A)(a) (added by the Access to Justice Act 1999 s 42(1)).

19 Courts and Legal Services Act 1990 s 27(2A)(b) (as added: see note 18).

20 Courts and Legal Services Act 1990 s 27(2A) (as added: see note 18).

21 Courts and Legal Services Act 1990 s 27(4). Where immediately before 1 January 1991 no restriction was placed on persons entitled to exercise any right of audience in relation to any particular court or in relation to particular proceedings, nothing in these provisions is to be taken to place such a restriction on any person: s 27(7).

22 Courts and Legal Services Act 1990 s 27(5).

23 Ie either immediately before 1 January 1991 or by virtue of any provision made by or under an enactment passed subsequently: Courts and Legal Services Act 1990 s 27(8)(a), (b). Accordingly the Association of Law Costs Draftsmen is designated as an authorised body for the purposes of s 27 by the Association of Law Costs Draftsmen Order 2006, SI 2006/3333.

24 For these purposes, 'advocate', in relation to any proceedings, means any person exercising a right of audience as a representative of, or on behalf of, any party to the proceedings: Courts and Legal Services Act 1990 s 27(9).

25 Courts and Legal Services Act 1990 s 27(8). But a court may not limit the right to appear before the court in any proceedings to only some of those who have the right by virtue of the provisions of s 28: s 28(8A) (added by the Access to Justice Act 1999 Sch 6 paras 4, 6(1), (4)(b)).

26 Ie the Solicitors Act 1974 s 20 (prospectively repealed) (unqualified person not to act as a solicitor: see PARA 589); s 22 (prospectively repealed) (unqualified person not to prepare certain documents: see PARA 595) and s 25 (costs where an unqualified person acts as a solicitor: see PARA 590): Courts and Legal Services Act 1990 s 27(10).

27 Courts and Legal Services Act 1990 s 27(10).

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495-498 The statutory objective and the general principle ... Right to conduct litigation

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/498. Right to conduct litigation.

498. Right to conduct litigation.

Until a day to be appointed the following provisions have effect¹. The question whether a person has a right to conduct litigation², or any category of litigation, is to be determined solely in accordance with the provisions of Part II³ of the Courts and Legal Services Act 1990⁴.

A person has a right to conduct litigation in relation to any proceedings⁵ only in the following cases:

- 376 (1) where he has a right to conduct litigation in relation to those proceedings granted by the appropriate authorised body⁶ and that body's qualification regulations⁷ and rules of conduct⁸ have been approved for those purposes in relation to that right⁹;
- 377 (2) where head (1) above does not apply but he has a right to conduct litigation in relation to those proceedings granted by or under any enactment¹⁰;
- 378 (3) where head (1) above does not apply but he has a right to conduct litigation granted by that court¹¹ in relation to those proceedings¹²;
- 379 (4) where he is a party to those proceedings and would have had a right to conduct the litigation, in his capacity as such, if the 1990 Act had not been passed¹³.

Every person who exercises in relation to proceedings in any court a right to conduct litigation granted by an authorised body has:

- 380 (a) a duty to the court to act with independence in the interests of justice¹⁴; and
- 381 (b) a duty to comply with rules of conduct of the body relating to the right and approved for the purposes of the rights to conduct litigation¹⁵;

and those duties must override any obligation which the person may have (otherwise than under the criminal law) if it is inconsistent with them¹⁶.

Where, immediately before 1 January 1991, no restriction was placed on the persons entitled to exercise any right to conduct litigation in relation to a particular court, or in relation to particular proceedings, nothing in these provisions is to be taken to place any such restriction on any person¹⁷.

Certain statutory provisions relating to unqualified persons¹⁸ do not apply in relation to any act done in the exercise of a right to conduct litigation¹⁹.

1 The Courts and Legal Services Act 1990 s 28 is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(a), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

3 ie the Courts and Legal Services Act 1990 Pt II (ss 17-70): see PARAS 495-497, 499 et seq.

4 Courts and Legal Services Act 1990 s 28(1) (prospectively repealed: see note 1). As to the general principle governing the grant of rights to conduct litigation and the statutory duty of those exercising the

function of granting such rights see ss 17, 18; and PARAS 495-496. As to the offences of acting in the purported exercise of rights of litigation or pretending to be entitled to conduct litigation see PARAS 584-585. Nothing in s 28 must be taken to require the Bar Standards Board or the Institute of Legal Executives to grant a right to conduct litigation: s 28(5A) (added by the Access to Justice Act 1999 s 40(1), (3); and prospectively repealed). The wording in the Courts and Legal Services Act 1990 s 28(5A) refers to the General Council of the Bar. However in practice the body responsible for the regulations of barristers is the Bar Standards Board: see PARA 1049.

5 As to the meaning of 'proceedings' see PARA 495 note 2.

6 For these purposes, 'authorised body' means:

- 244 (1) the Solicitors Regulation Authority (Courts and Legal Services Act 1990 s 28(5) (prospectively repealed: see note 1));
- 245 (2) the Bar Standards Board (s 28(5) (amended by the Access to Justice Act 1999 s 40(1), (2)));
- 246 (3) the Institute of Legal Executives (Courts and Legal Services Act 1990 s 28(5) (amended by the Access to Justice Act 1999 s 40(1), (2); and prospectively repealed)); and
- 247 (4) any professional or other body which has been designated by Order in Council as an authorised body for such purposes (Courts and Legal Services Act 1990 s 28(5); and prospectively repealed).

The wording in the Courts and Legal Services Act 1990 s 28(5) in head (1) refers to the Law Society, and in head (2) refers to the General Council of the Bar. However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619 et seq), and the body responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). The Association of Law Costs Draftsmen has been designated by Order in Council as an authorised body for the purposes of s 28: see the Association of Law Costs Draftsmen Order 2006, SI 2006/3333, art 3. 'Appropriate authorised body', in relation to any person claiming to be entitled to any right to conduct litigation by virtue of the Courts and Legal Services Act 1990 s 28(2)(a) (see head (1) in the text) means the authorised body granting that right and of which that person is a member: s 28(5) (as so prospectively repealed). As to the meaning of 'member' see PARA 351 note 3. Any person (including a solicitor) who has a right to conduct litigation granted by an authorised body in accordance with the provisions of the Courts and Legal Services Act 1990 is referred to therein as an 'authorised litigator': see s 119(1) (definition prospectively repealed by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (2), Sch 23). Cf PARA 497 note 7. As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

7 For these purposes, 'qualification regulations', in relation to an authorised body, means regulations (however they may be described) as to the education and training which members of that body must receive in order to be entitled to, or exercise, any right to conduct litigation granted by it: Courts and Legal Services Act 1990 s 28(5) (prospectively repealed: see note 1). As to the education and training of solicitors see PARA 646 et seq. Cf PARA 497 note 8. As to the education and training of barristers see PARA 1060. As to the education and training of legal executives see PARAS 1469-1470.

8 For these purposes, 'rules of conduct', in relation to any authorised body, means rules (however they may be described) as to the conduct required of members of that body in exercising any right to conduct litigation granted by it: Courts and Legal Services Act 1990 s 28(5) (prospectively repealed: see note 1). In any Act any reference to rules of conduct (including until a day to be appointed those references in ss 27(9), 28(5) and as from a day to be appointed the Legal Services Act 2007 s 21 (see PARA 377)) includes a reference to rules of practice: Courts and Legal Services Act 1990 s 119(3) (prospectively amended by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (6)). At the date at which this volume states the law no such day had been appointed. As to rules of conduct generally see PARA 495.

9 Courts and Legal Services Act 1990 s 28(2)(a) (amended by the Access to Justice Act 1999 Sch 6 paras 4, 7(1), (2), Sch 15 Pt II; prospectively repealed (see note 1)).

10 Courts and Legal Services Act 1990 s 28(2)(b) (prospectively repealed: see note 1).

11 As to the meaning of 'court' see PARA 426 note 12.

12 Courts and Legal Services Act 1990 s 28(2)(c) (prospectively repealed: see note 1).

13 Courts and Legal Services Act 1990 s 28(2)(d) (prospectively repealed: see note 1).

14 Courts and Legal Services Act 1990 s 28(2A)(a) (added by the Access to Justice Act 1999 s 42(2); prospectively repealed (see note 1)).

15 Courts and Legal Services Act 1990 s 28(2A)(b) (as added (see note 14); prospectively repealed (see note 1)).

16 Courts and Legal Services Act 1990 s 28(2A) (as added (see note 14); prospectively repealed (see note 1)). A court may not limit the right to conduct litigation in relation to proceedings before the court to only some of those who have the right by virtue of s 28: s 28(4A) (added by the Access to Justice Act 1999 Sch 6 paras 4, 7(1), (3); as so prospectively repealed).

17 Courts and Legal Services Act 1990 s 28(4) (prospectively repealed: see note 1).

18 Ie the Solicitors Act 1974 s 20 (prospectively repealed) (unqualified person not to act as a solicitor: see PARA 589); s 22 (prospectively repealed) (unqualified person not to prepare certain documents: see PARA 595) and s 25 (costs where an unqualified person acts as a solicitor: see PARA 590): Courts and Legal Services Act 1990 s 28(6).

19 Courts and Legal Services Act 1990 s 28(6) (prospectively repealed: see note 1).

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495-498 The statutory objective and the general principle ... Right to conduct litigation

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Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/499. Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales.

499. Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales.

The Secretary of State¹ may by regulations prescribe circumstances in which, and conditions subject to which, a practitioner² who is qualified to practise in Scotland or Northern Ireland may, in such capacity as may be prescribed, exercise in England and Wales³:

- 382 (1) prescribed rights of audience⁴; or
- 383 (2) prescribed rights to conduct litigation⁵,

without being entitled to do so apart from the regulations⁶.

He may also by regulations make provision for the purpose of enabling practitioners who are qualified to practise in Scotland or Northern Ireland to become qualified to practise in England and Wales on terms, and subject to conditions, corresponding or similar to those on which practitioners who are qualified to practise in member states of the European Community may become qualified to practise in that jurisdiction⁷.

Regulations made under these provisions may modify any rule of law or practice which the Secretary of State⁸ considers should be modified in order to give effect to the regulations⁹.

As from a day to be appointed¹⁰ regulations may be made under the above provisions¹¹ only if:

- 384 (a) the Legal Services Board¹² has made a recommendation¹³;
- 385 (b) draft regulations were annexed to the recommendation¹⁴;
- 386 (c) the regulations are in the same form as, or a form not materially different from, the draft regulations¹⁵.

1 As from a day to be appointed the Courts and Legal Services Act 1990 s 60 is amended by the Legal Services Act 2007 Sch 21 para 83, 89(a), (b), (d) so that the functions carried out by the Secretary of State under the Courts and Legal Services Act 1990 s 60 are instead carried out by the Lord Chancellor. At the date at which this volume states the law no such day had been appointed.

2 For these purposes, 'practitioner' means:

- 248 (1) a member of the Bar of Northern Ireland or a solicitor of the Supreme Court of Northern Ireland or an advocate or solicitor in Scotland (Courts and Legal Services Act 1990 s 60(5)(a)); and
- 249 (2) any person falling within such category as may be prescribed (s 60(5)(b)).

As from a day to be appointed the words 'solicitor of the Supreme Court of Northern Ireland' in head (1) above are replaced by the words 'solicitor of the Court of Judicature of Northern Ireland' by the Constitutional Reform Act 2005 Sch 11 para 3. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

'Prescribed' means prescribed by regulations under the Courts and Legal Services Act 1990: s 119(1).

3 Courts and Legal Services Act 1990 s 60(1) (prospectively amended: see note 2).

4 Courts and Legal Services Act 1990 s 60(1)(a). As to the meaning of 'right of audience' see PARA 495 note 3.

5 Courts and Legal Services Act 1990 s 60(1)(b). As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

6 Courts and Legal Services Act 1990 s 60(1). Such regulations may, in particular:

- 250 (1) prescribe any right of audience which may not be exercised by a person in England and Wales unless he is instructed to act together with a person who has that right of audience there (s 60(3)(a));
- 251 (2) prescribe legal services which may not be provided by any person practising by virtue of the regulations (s 60(3)(b));
- 252 (3) prescribe the title or description which must be used by any person practising by virtue of the regulations (s 60(3)(c));
- 253 (4) provide for the means by which the qualification of any person claiming to be entitled to practise by virtue of the regulations is to be verified (s 60(3)(d));
- 254 (5) provide for such professional or other body as may be prescribed to have power to investigate and deal with any complaint made against a person practising by virtue of the regulations (s 60(3)(e)).

At the date at which this volume states the law no such regulations had been made.

7 Courts and Legal Services Act 1990 s 60(2) (prospectively amended: see note 1).

8 See note 1.

9 Courts and Legal Services Act 1990 s 60(4) (prospectively amended: see note 1). At the date at which this volume states the law, no such regulations had been made.

10 The Courts and Legal Services Act 1990 s 60(2A), s 60A are added by the Legal Services Act 2007 Sch 21 paras 83, 89 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

11 Ie under the Courts and Legal Services Act 1990 s 60.

12 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

13 Courts and Legal Services Act 2007 s 60(2A)(a) (as prospectively added: see note 10). The recommendation mentioned in the text refers to a recommendation under s 60A. Before making a recommendation under s 60A, the Legal Services Board must publish a draft of the proposed recommendation and the proposed draft regulations: s 60A(1) (as so prospectively added). The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period: s 60A(2) (as so prospectively added). Before making the recommendation, the Board must have regard to any representations duly made: s 60A(3) (so prospectively added). If the draft regulations to be annexed to the recommendation differ from the draft regulations previously published in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft recommendations along with a statement detailing the changes made and the reasons for the changes: s 60A(4).

14 Courts and Legal Services Act 2007 s 60(2A)(b) (prospectively added: see note 10).

15 Courts and Legal Services Act 2007 s 60(2A)(c) (prospectively added: see note 10).

UPDATE

499-500 Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales, Right of audience in the county court by Lord Chancellor's direction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

499 Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales

NOTES 1, 10--Day appointed is 1 January 2010: SI 2009/3250.

NOTE 2--Day appointed is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/500. Right of audience in the county court by Lord Chancellor's direction.

500. Right of audience in the county court by Lord Chancellor's direction.

The Lord Chancellor may, with the concurrence of the Lord Chief Justice¹, at any time direct that such categories of persons in relevant legal employment² as may be specified in the direction may address the court in any proceedings in a county court, or in proceedings in a county court of such description as may be so specified³. Such a direction may be given subject to such conditions and restrictions as appear to the Lord Chancellor to be necessary or expedient, and may be expressed to have effect as respects every county court or as respects a specified county court or as respects one or more specified places where a county court sits⁴.

1 The Lord Chief Justice may nominate a judicial office holder (as defined in the Constitutional Reform Act 2005 s 109(4) (see **COURTS**)) to exercise his functions under the County Courts Act 1984 s 61: s 61(5) (added by the Constitutional Reform Act 2005 Sch 4 paras 160, 168(1), (3)).

2 'Relevant legal employment' means employment which consists of or includes giving assistance in the conduct of litigation to a legal representative whether in private practice or not: County Courts Act 1984 s 61(2) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 49(2)). Until a day to be appointed 'legal representative' means an authorised advocate or authorised litigator as defined by the Courts and Legal Services Act 1990 s 119(1) (see PARAS 497 note 7, 498 note 6 respectively): County Courts Act 1984 s 147(1) (definition added by the Courts and Legal Services Act 1990 Sch 18 para 49(1)). As from a day to be appointed 'legal representative' means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act) (see PARA 512 notes 3, 4): County Court Act 1984 (s 147(1) as added; prospectively amended by the Legal Services Act 2007 Sch 21 para 61). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meanings of 'right of audience' and 'conduct of litigation' see PARA 512 notes 3, 4 (definitions applied by the County Court Act 1984 s 147(1) (as so prospectively repealed)).

3 County Courts Act 1984 s 61(1).

4 County Courts Act 1984 s 61(3). The power to give directions so conferred includes a power to vary or rescind any direction so given: s 61(4). At the date at which this volume states the law, no directions had been given under s 61, but, by virtue of the Interpretation Act 1978 s 17(2)(b), the County Courts (Right of Audience) Direction 1978 has effect as if so made. See further **COURTS**.

UPDATE

499-500 Regulation of right of Scottish and Northern Ireland lawyers to practise in England and Wales, Right of audience in the county court by Lord Chancellor's direction

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

500 Right of audience in the county court by Lord Chancellor's direction

NOTE 2--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/501. Employed advocate's right to audience.

501. Employed advocate's right to audience.

Until a day to be appointed the following provisions have effect¹. Where a person who has a right of audience² granted by an authorised body³ is employed as a Crown Prosecutor or in any other description of employment, any qualification regulations or rules of conduct⁴ of the body relating to that right which fall within the relevant provisions⁵ must not have effect in relation to him⁶.

1 The Courts and Legal Services Act 1990 s 31A (added by the Access to Justice Act 1999 s 37) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(h), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'right of audience' see PARA 495 note 3.

3 As to the meaning of 'authorised body' see PARA 329 note 2.

4 As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to any right of audience or proposed right of audience see PARA 497 notes 8, 9 (definitions applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'qualification regulations' and 'rules of conduct' in relation to the right to conduct litigation or proposed right to conduct litigation see PARA 498 notes 7, 8. These definitions are prospectively substituted and, as from a day to be appointed, as to the meaning of 'qualification regulations' and 'conduct rules' in relation to a body see the Legal Services Act 2007 s 21; and PARA 377 notes 5, 7 (definitions applied by the Courts and Legal Services Act 1990 s 119(1) (application of definition prospectively substituted by the Legal Services Act 2007 Sch 21 paras 83, 97(1), (4))). At the date at which this volume states the law no such day had been appointed.

5 The provisions which fall within the Courts and Legal Services Act 1990 s 31A(2). Qualification regulations or rules of conduct relating to a right granted by a body fall within s 31A(2) if:

255 (1) they limit the courts before which, or proceedings in which, that right may be exercised by members of the body who are employed or limit the circumstances in which that right may be exercised by them by requiring them to be accompanied by some other person when exercising it (s 31A(2)(a) (as added and prospectively repealed: see note 1)); and

256 (2) they do not impose the same limitation on members of the body who have the right but are not employed (s 31A(2)(b) (as so added and prospectively repealed)).

As to the meaning of 'member' see PARA 351 note 3.

6 Courts and Legal Services Act 1990 s 31A(1) (as added and prospectively repealed: see note 1).

UPDATE

501 Employed advocate's right to audience

TEXT AND NOTES--Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/502. Right to audience of advocates and litigators employed by Legal Services Commission.

502. Right to audience of advocates and litigators employed by Legal Services Commission.

Until a day to be appointed the following provisions have effect¹. Where a person who has a right of audience or right to conduct litigation granted by an authorised body² is employed by the Legal Services Commission, or by any body established and maintained by the Legal Services Commission, any rules of the authorised body which fall within relevant provisions³ do not have effect in relation to him⁴.

As from a day to be appointed the following provisions have effect⁵. Where a person is authorised by a relevant approved regulator⁶ (the 'regulator') to carry on an activity which constitutes the exercise of a right of audience or the conduct of litigation and is employed by the Legal Services Commission, or by any body established and maintained by that Commission, any rules of the regulator which fall within relevant provisions⁷ do not have effect in relation to that person⁸.

1 The Courts and Legal Services Act 1990 s 31B(1) (s 31B added by the Access to Justice Act 1999 s 38) is substituted, s 31B(1A), (4) added and in s 31B(2), (3) the word 'regulator' is substituted for the word 'body' and the words 'conduct rules' are substituted for the words 'rules of conduct' by the Legal Services Act 2007 Sch 21 paras 83, 85 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meanings of 'right of audience' and 'right to conduct litigation' see PARA 495 notes 3, 4. As to the meaning of 'authorised body' see PARA 329 note 2.

3 The rules which fall within the Courts and Legal Services Act 1990 s 31B(2). Rules of a body fall within s 31B(2) if they are:

- 257 (1) rules of conduct prohibiting or limiting the exercise of the right on behalf of members of the public by members of the body who are employees (s 31B(2)(a) (as added: see note 1)); or
- 258 (2) rules of any other description prohibiting or limiting the provision of legal services to members of the public by such members of the body (s 31B(2)(b) (as so added)),

and either of the conditions specified in s 31B(3) is satisfied: s 31B(2) (as so added). As to the meaning of 'member' see PARA 351 note 3.

Those conditions are:

- 259 (a) that the prohibition or limitation is on the exercise of the right, or the provision of the services, otherwise than on the instructions of solicitors (or other persons acting for the members of the public) (s 31B(3)(a) (as so added)); and
- 260 (b) that the rules do not impose the same prohibition or limitation on members of the body who have the right but are not employees (s 31B(3)(b) (as so added)).

As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

4 Courts and Legal Services Act 1990 s 31B(1) (as added: see note 1).

5 See note 1.

6 As to the meaning of 'relevant approved regulator' see the Legal Services Act 2007 s 20(3); and PARA 358 (definition applied by the Courts and Legal Services Act 1990 s 31B(4) (as prospectively added: see note 1)).

7 The rules which fall within the Courts and Legal Services Act 1990 s 31B(2) (as prospectively amended: see note 1). Rules of a body fall within s 31B(2) if they are:

- 261 (1) conduct rules prohibiting or limiting the exercise of the right on behalf of members of the public by members of the body who are employees (s 31B(2)(a) (as added and prospectively amended: see note 1)); or
- 262 (2) rules of any other description prohibiting or limiting the provision of legal services to members of the public by such members of the body (s 31B(2)(b) (as so added and prospectively amended)),

and either of the conditions specified in s 31B(3) is satisfied: s 31B(2) (as so added).

Those conditions are:

- 263 (a) that the prohibition or limitation is on the exercise of the right, or the provision of the services, otherwise than on the instructions of solicitors (or other persons acting for the members of the public) (s 31B(3)(a) (as so added)); and
- 264 (b) that the rules do not impose the same prohibition or limitation on members of the regulator who have the right but are not employees (s 31B(3)(b) (as so added; and prospectively amended)).

8 Courts and Legal Services Act 1990 s 31B(1) (as added and prospectively substituted: see note 1).

UPDATE

502 Right to audience of advocates and litigators employed by Legal Services Commission

TEXT AND NOTES--Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/503. Right to prepare papers for probate.

503. Right to prepare papers for probate.

Until a day to be appointed the following provisions have effect¹. The prohibition relating to an unqualified person preparing papers for probate² does not apply to any person to whom exemption is granted by an approved body³. An approved body may only grant such an exemption to a person who is one of its members and who satisfies it:

- 387 (1) that his business is, and is likely to continue to be, carried on by fit and proper persons or, in the case of an individual, that he is a fit and proper person;
- 388 (2) that he, and any person employed by him in the provision of probate services, is suitably trained;
- 389 (3) that satisfactory arrangements will at all times be in force for covering adequately the risk of any claim made against him in connection with the provision of probate services by him, however arising;
- 390 (4) that he is a member of, or otherwise subject to, a scheme which has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of probate services and complies with such requirements as may be prescribed by regulations⁴ made by the Secretary of State with respect to matters relating to such complaints; and
- 391 (5) that he has in force satisfactory arrangements to protect his clients in the event of his ceasing to provide probate services⁵.

1 The Courts and Legal Services Act 1990 s 55 is repealed by the Legal Services Act 2007 Sch 21, para 83, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 See the provisions of the Solicitors Act 1974 s 23(1) (see PARA 592).

3 See the Courts and Legal Services Act 1990 s 55(1) (as prospectively repealed: see note 1). 'Approved body' means a professional or other body which is approved by the Secretary of State under the Courts and Legal Services Act 1990 Sch 9: s 55(3) (amended by SI 2003/1887; and so prospectively repealed). The Council for Licensed Conveyancers may and has become an approved body for the purposes of granting, in accordance with the Courts and Legal Services Act 1990 s 55, exemption from the provisions of the Solicitors Act 1974 s 23(1): Courts and Legal Services Act 1990 s 53(1)(c); Probate Services (Approved Bodies) Order 2008, SI 2008/1865. The approval of any body under the Courts and Legal Services Act 1990 Sch 9 may be revoked under that Schedule: s 55(4) (as so prospectively repealed).

4 The Probate Services (Approved Body) Complaints Regulations 2004, SI 2004/2951, have been made for the purposes of head (4).

5 Courts and Legal Services Act 1990 s 55(2) (amended by SI 2003/1887; and prospectively repealed (see note 1)).

UPDATE

503 Right to prepare papers for probate

TEXT AND NOTES--Repeal of these provisions in force 1 January 2010: SI 2009/3250, which makes transitional provision in respect of pending applications. The Probate Services (Approved Bodies) Order 2009, SI 2009/1588, provided for the Association of Chartered

Certified Accountants to be an approved body for the purpose of granting an exemption under the repealed provisions.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/504. Approval for the purposes of probate.

504. Approval for the purposes of probate.

Until a day to be appointed the following provisions have effect¹. Where the Secretary of State receives an application from a professional or other body (the 'applicant') for approval², he must refer the application to the Consultative Panel³ and the Panel must consider the application and give the Secretary of State such advice as it considers appropriate⁴.

When the Secretary of State has received the Consultative Panel's advice he must refer the application, together with that advice, to the President of the Family Division⁵. The President must consider the application and, in the light of that advice, give the Secretary of State such advice as he considers appropriate⁶.

The applicant must provide the Secretary of State, the Consultative Panel and the President with any information that they may reasonably require⁷.

Having considered the advice given to him by the Consultative Panel and by the President, the Secretary of State may by order approve the application if, but only if, he is satisfied that the applicant has in force suitable arrangements for training and for ensuring that any person to whom the applicant grants the exemption⁸ will at all times, while exempt, comply with the requirements⁹.

If the Secretary of State proposes to refuse the application he must give the applicant written notice¹⁰ of his proposal¹¹. If the Secretary of State refuses the application he must give notice to the applicant in writing¹².

1 The Courts and Legal Services Act 1990 Sch 9 is repealed by the Legal Services Act 2007 Sch 21, para 83, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie approval under the Courts and Legal Services Act 1990 Sch 9.

3 Courts and Legal Services Act 1990 Sch 9 para 1(1) (prospectively repealed: see note 1).

4 Courts and Legal Services Act 1990 Sch 9 para 1(2) (prospectively repealed: see note 1).

5 Courts and Legal Services Act 1990 Sch 9 para 2(1) (prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 Sch 9 para 2(2) (prospectively repealed: see note 1). If the President asks the Consultative Panel to give him advice with respect to the application, it is the duty of the Consultative Panel to do so: Courts and Legal Services Act 1990 Sch 9 para 2(3) (as so prospectively repealed).

7 Courts and Legal Services Act 1990 Sch 9 para 3 (prospectively repealed: see note 1).

8 Ie the exemption mentioned in the Courts and Legal Services Act 1990 s 55(1).

9 Courts and Legal Services Act 1990 Sch 9 para 4 (prospectively repealed: see note 1). The requirements mentioned in the text are the requirements of the Courts and Legal Services Act 1990 s 55(2)(a)-(e) (see PARA 503).

10 The notice must give the Secretary of State's reasons for proposing to refuse the application and inform the applicant of the effect of the Courts and Legal Services Act 1990 Sch 9, para 5(3): Sch 9 para 5(2) (prospectively repealed: see note 1). Where such a notice is served, it is the duty of the Secretary of State, before determining whether to grant or refuse the application, to consider any representations duly made by the applicant: Sch 9 para 5(3) (as so prospectively repealed). For these purposes representations are duly made

if they are made to the Secretary of State before the end of the period of 28 days beginning with the day on which the notice is served and unless the Secretary of State directs in a particular case, they are in writing: Sch 9 para 5(4) (as so prospectively repealed).

11 Courts and Legal Services Act 1990 Sch 9 para 5(1) (prospectively repealed: see note 1).

12 Courts and Legal Services Act 1990 Sch 9 para 5(5) (prospectively repealed: see note 1). Any notice given under Sch 9 para 5(5) must give the Secretary of State's reasons for refusing the application: Sch 9 para 5(6).

UPDATE

504-506 Approval for the purposes of probate ... Role of Consultative Panel in the revocation of approval for the purposes of probate

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/505. Revocation of approval for the purposes of probate.

505. Revocation of approval for the purposes of probate.

Until a day to be appointed the following provisions have effect¹. The revocation of any approval to be an approved body² must be by order (a 'revoking order') made by the Secretary of State³. A revoking order may only be made if:

- 392 (1) the approved body has made a written request to the Secretary of State asking for it to be made⁴;
- 393 (2) the approved body has agreed in writing to its being made⁵; or
- 394 (3) the Secretary of State is satisfied that the circumstances at the time when he is considering the question are such that, had that body then been applying to become an approved body, its application would have failed⁶.

Where a revoking order is made:

- 395 (a) the exemption granted to any person by the body with respect to whom the order is made ceases to have effect, subject to any transitional provision made by the order⁷; and
- 396 (b) the Secretary of State must give the body with respect to whom the order is made written notice of the making of the order, take such steps as are reasonably practicable to bring the making of the order to the attention of members of that body and publish notice of the making of the order in such manner as he considers appropriate for bringing it to the attention of persons (other than those members) who, in his opinion, are likely to be affected by the order⁸.

1 The Courts and Legal Services Act 1990 Sch 9 is repealed by the Legal Services Act 2007 Sch 21, para 83, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The approval given under the Courts and Legal Services Act 1990 Sch 9 (see PARA 504).

3 Courts and Legal Services Act 1990 Sch 9 para 6(1) (amended by SI 2003/1887). A revoking order may make such transitional and incidental provision as the Secretary of State considers necessary or expedient: Courts and Legal Services Act 1990 Sch 9 para 6(3) (amended by SI 2003/1887).

4 Courts and Legal Services Act 1990 Sch 9 para 6(2)(a) (amended by SI 2003/1887).

5 Courts and Legal Services Act 1990 Sch 9 para 6(2)(b).

6 Courts and Legal Services Act 1990 Sch 9 para 6(2)(c) (amended by SI 2003/1887). Where the Secretary of State is considering whether to make a revoking order under head (3) in the text he must consider the advice of the Consultative Panel: see the Courts and Legal Services Act 1990 Sch 9 paras 7-11; and PARA 506.

7 Courts and Legal Services Act 1990 Sch 9 para 6(4)(a).

8 Courts and Legal Services Act 1990 Sch 9 para 6(4)(b) (amended by SI 2003/1887).

UPDATE

**504-506 Approval for the purposes of probate ... Role of Consultative Panel
in the revocation of approval for the purposes of probate**

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/506. Role of Consultative Panel in the revocation of approval for the purposes of probate.

506. Role of Consultative Panel in the revocation of approval for the purposes of probate.

Until a day to be appointed the following provisions have effect¹. Where the Secretary of State is considering whether to make a revoking order on certain grounds² he must seek the advice of the Consultative Panel and the Consultative Panel must carry out such investigations with respect to the approved body as it considers appropriate³.

Where the Secretary of State has not sought the advice of the Consultative Panel but the Consultative Panel has reason to believe that there may be grounds for recommending that a revoking order be made with respect to an approved body⁴, it may carry out such investigations with respect to the approved body as it considers appropriate⁵.

If, on concluding any investigation carried out under these provisions the Consultative Panel considers that there are grounds for recommending the making of a revoking order with respect to the approved body concerned, it must advise the Secretary of State accordingly⁶.

If the Consultative Panel advises the Secretary of State that there are grounds for recommending the making of a revoking order with respect to an approved body, the Secretary of State must send written notice of that advice, and of the effect of such an order, to that body⁷.

It is the duty of the Secretary of State to consider any advice given to him by the Consultative Panel under the above provisions⁸ and, having done so, the Secretary of State must send to the President a copy of any such advice⁹ and inform the President of his view as to whether or not a revoking order with respect to the approved body concerned should be made¹⁰.

It is the duty of the President to consider the information sent to him by the Secretary of State, to inform the Secretary of State of his own decision in the matter and to give his reasons, in writing, for his decision¹¹.

No revoking order is to be made with respect to the approved body unless the Secretary of State and the President agree that it should be made¹².

1 The Courts and Legal Services Act 1990 Sch 9 is repealed by the Legal Services Act 2007 Sch 21, para 83, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie by virtue of the Courts and Legal Services Act 1990 Sch 9 para 6(2)(c) (see PARA 505).

3 Courts and Legal Services Act 1990 Sch 9 para 7(1) (amended by the Access to Justice Act 1999 s 35(4)(a) and SI 2003/1887). Where the Consultative Panel is carrying out an investigation under the Courts and Legal Services Act 1990 Sch 9 para 7 it may require the approved body concerned to provide it with such information, including copies of such documents, as it may reasonably require for the purposes of the investigation: Sch 9 para 8(1) (amended by the Access to Justice Act 1999 s 35(4)(a)). No person is to be required to provide any such information, or produce any copy of a document, which he could not be compelled to provide or produce in civil proceedings before a court: Courts and Legal Services Act 1990 Sch 9 para 8(2). Where an approved body fails, without reasonable excuse, to comply with a request made to it by the Consultative Panel under Sch 9 para 8(1), Sch 9 para 6(2)(c) is taken to have been satisfied in relation to that body: Sch 9 para 8(3) (amended by the Access to Justice Act 1990 s 35(4)(a)).

4 Ie under the Courts and Legal Services Act 1990 Sch 9 para 6(2)(c).

5 Courts and Legal Services Act 1990 Sch 9 para 7(2) (amended by the Access to Justice Act 1999 s 35(4)(a) and SI 2003/1887).

6 Courts and Legal Services Act 1990 Sch 9 para 7(3) (amended by the Access to Justice Act 1999 s 35(4)(a) and SI 2003/1887).

7 Courts and Legal Services Act 1990 Sch 9 para 9(1) (amended by the Access to Justice Act 1999 s 35(4)(a) and SI 2003/1887). Any such notice must invite the approved body to make representations in writing to the Secretary of State or such person as he may appoint for the purpose: Courts and Legal Services Act 1990 Sch 9 para 9(2) (amended by SI 2003/1887). Any such representations must be made before the end of the period of three months beginning with the date on which the notice was given: Courts and Legal Services Act 1990 Sch 9 para 9(3). Where the Secretary of State has given notice to an approved body under Sch 9 para 9(1) or is proposing to make a revoking order with respect to an approved body, by virtue of Sch 9 para 6(2)(a) or (b), he must take such steps as are reasonably practicable to bring the matter to the attention of the members of the approved body and of any other persons who, in his opinion, are likely to be affected by any revoking order made with respect to that body: Sch 9 para 10(1) (amended by SI 2003/1887). Any such steps must include inviting those members and other persons to make representations to the Secretary of State or (as the case may be) to the person appointed by him for the purpose: Courts and Legal Services Act 1990 Sch 9 para 10(2) (amended by SI 2003/1887). Any such representations must, except in such circumstances as the Secretary of State may specify, be in writing and must be made before the end of the period of three months beginning with such date as may be fixed by the Secretary of State: Courts and Legal Services Act 1990 Sch 9 para 10(3) (amended by SI 2003/1887).

8 He under the Courts and Legal Services Act 1990 Sch 9 para 7. The Secretary of State must also consider any representations duly made under Sch 9 para 9 or Sch 9 para 10.

9 And any representations made under Sch 9 para 9 or Sch 9 para 10.

10 See the Courts and Legal Services Act 1990 Sch 9 para 11(1), (2) (amended by the Access to Justice Act 1999 s 35(4)(a) and SI 2003/1887).

11 Courts and Legal Services Act 1990 Sch 9 para 11(3) (amended by SI 2003/1887).

12 Courts and Legal Services Act 1990 Sch 9 para 11(4) (amended by SI 2003/1887).

UPDATE

504-506 Approval for the purposes of probate ... Role of Consultative Panel in the revocation of approval for the purposes of probate

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/507. Legal professional privilege.

507. Legal professional privilege.

Until a day to be appointed the following provisions have effect¹. Any communication made to or by a person who is not a barrister or solicitor² at any time when that person is providing advocacy or litigation services³ as an authorised advocate or authorised litigator⁴ is, in any legal proceedings, privileged from disclosure in like manner as if the person in question had at all material times been acting as his client's solicitor⁵.

1 The Courts and Legal Services Act 1990 s 63 is repealed by the Legal Services Act 2007 Sch 21 paras 83, 91, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

3 As to the meanings of 'advocacy services' and 'litigation services' see PARA 495 notes 3, 4.

4 As to the meaning of 'authorised advocate' see PARA 497 note 7. As to the meaning of 'authorised litigator' see PARA 498 note 6.

5 Courts and Legal Services Act 1990 s 63(1)(a), (2) (prospectively repealed: see note 1). As from a day to be appointed this also applies to any communication made to or by a person who is not a barrister or solicitor at any time when that person is providing conveyancing services as an authorised practitioner or providing probate services as a probate practitioner: s 63(1)(b), (c) (not yet in force; prospectively repealed). 'Probate practitioner' means a person to whom the Solicitors Act 1974 s 23(1) (see PARA 592) does not apply: Courts and Legal Services Act 1990 s 63(3) (not yet in force; prospectively repealed). As to the meaning of 'authorised practitioner' see PARA 424 note 6. As to the meaning of 'conveyancing services' see PARA 495 note 5. As to the meaning of 'probate services' see PARA 427 note 5.

UPDATE

507 Legal professional privilege

NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 21 para 91 is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(2) PROVISION OF LEGAL SERVICES UNDER THE COURTS AND LEGAL SERVICES ACT 1990/508. Change of authorised body.

508. Change of authorised body.

Until a day to be appointed the following provisions have effect¹. Where a person:

- 397 (1) has at any time had, and been entitled to exercise, a right of audience before a court in relation to proceedings of any description granted by one authorised body²; and
- 398 (2) becomes a member³ of another authorised body and has a right of audience before that court in relation to that description of proceedings granted by that body⁴,

any qualification regulations of that body relating to that right do not have effect in relation to him⁵.

As from a day to be appointed the following provisions have effect⁶. Where a person:

- 399 (a) has at any time been authorised by a relevant approved regulator⁷ to exercise a right of audience before a court in relation to proceedings of a particular description⁸; and
- 400 (b) becomes authorised by another relevant approved regulator to exercise a right of audience before that court in relation to that description of proceedings⁹,

any qualification regulations of the relevant approved regulator mentioned in head (b) above which relate to that right are not to have effect in relation to the person¹⁰.

1 The Courts and Legal Services Act 1990 s 31C is added by the Access to Justice Act 1999s 39. Section 31C(1) is substituted, s 31C(4) is added and the words 'relevant approved regulator' are substituted for the word 'body' in s 31C(2), (3) by the Legal Services Act 2007 Sch 21 paras 83, 86 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 s 31C(1)(a) (as added: see note 1). As to the meaning of 'authorised body' see PARA 329 note 2. As to the meaning of 'court' see PARA 426 note 12. As to the meaning of 'right of audience' see PARA 495 note 3.

3 As to the meaning of 'member' see PARA 351 note 3.

4 Courts and Legal Services Act 1990 s 31C(1)(b) (as added: see note 1).

5 Courts and Legal Services Act 1990 s 31C(1) (as added: see note 1). Section 31C(1) does not apply in relation to any qualification regulations to the extent that they impose requirements relating to continuing education or training which have effect in relation to the exercise of the right by all members of the body who have the right: s 31C(2) (as so added). Nor does s 13C apply to a person if he has been banned from exercising the right of audience by the body mentioned in head (1) in the text as a result of disciplinary proceedings and that body has not lifted the ban: s 31C(3) (as so added).

6 See note 1.

7 As to the meaning of 'relevant approved regulator' see the Legal Services Act 2007 s 20(3); and see PARA 358 (definition applied by the Courts and Legal Services Act 1990 s 31C(4) (as prospectively added: see note 1)).

8 Courts and Legal Services Act 1990 s 31C(1)(a) (as added; and prospectively substituted: see note 1).

9 Courts and Legal Services Act 1990 s 31C(1)(b) (as added; and prospectively substituted: see note 1).

10 Courts and Legal Services Act 1990 s 31C(1) (as added; and prospectively substituted: see note 1). Section 31C(1) does not apply in relation to any qualification regulations to the extent that they impose requirements relating to continuing education or training which have effect in relation to the exercise of the right by all members of the relevant approved regulator who have the right: s 31C(2) (as so added; and prospectively amended: see note 1). Nor does s 31C(1) apply to a person if he has been banned from exercising the right of audience by the relevant approved regulator mentioned in head (a) in the text as a result of disciplinary proceedings and that relevant approved regulator has not lifted the ban: s 31C(3) (as so added and prospectively amended).

UPDATE

508 Change of authorised body

TEXT AND NOTES--Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/509. Introduction.

(3) RESERVED LEGAL ACTIVITIES UNDER THE

(i) Introduction

509. Introduction.

As from a day to be appointed the following provisions have effect¹. It is an offence for a person to carry on an activity (the 'relevant activity') which is a reserved legal activity² unless that person is entitled to carry on the relevant activity³; and whether a person is entitled to carry on that activity is to be determined solely in accordance with provisions of the Legal Services Act 2007⁴.

A person is entitled to carry on a relevant activity which is a reserved legal activity where the person is an authorised person in relation to the relevant activity⁵ or the person is an exempt person⁶ in relation to that activity⁷.

1 The Legal Services Act 2007 ss 13, 14 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activity' see PARA 512.

3 See the Legal Services Act 2007 s 14(1); and PARA 586.

4 Legal Services Act 2007 s 13(1). However the right of audience and the right to conduct litigation may be restricted by the court prior to the commencement of s 13: see s 196; and PARA 510.

5 As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515.

6 As to the meaning of 'exempt person' see PARA 516.

7 Legal Services Act 2007 s 13(2). This is subject to s 23 (see PARA 494); s 13(3).

UPDATE

509-514 Introduction ... Employed advocates

These provisions have effect for all purposes as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/510. Court's right to refuse right to conduct litigation and right of audience.

510. Court's right to refuse right to conduct litigation and right of audience.

As from a day to be appointed the following provisions have effect¹. Nothing in the Legal Services Act 2007 affects the power of any court in any proceedings to refuse to hear a person (for reasons which apply to that person as an individual) who would otherwise have a right of audience before the court in relation to those proceedings². Where a court so refuses to hear a person it must give its reasons for doing so³.

However a court may not limit the right to appear before the court in any proceedings, or the right to conduct litigation in relation to proceedings before the court, to only some of those who are entitled to exercise that right by virtue of the Legal Services Act 2007⁴.

1 The Legal Services Act 2007 s 192 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Legal Services Act 2007 s 192(1). As to the meaning of 'right of audience' see PARA 512 note 3. Where immediately before the commencement of s 13 (entitlement to carry on reserved legal activities) (see PARA 509), or by virtue of any provision made by or under an enactment passed subsequently, a court does not permit the appearance of advocates, or permits the appearance of advocates only with leave, no person may exercise a right of audience before the court, in relation to any proceedings, solely by virtue of being entitled to do so under the Legal Services Act 2007: s 192(3). For the purposes of s 192 'advocate', in relation to any proceedings, means a person exercising a right of audience as a representative of, or on behalf of, any party to the proceedings: s 192(6).

3 Legal Services Act 2007 s 192(2).

4 Legal Services Act 2007 s 192(4), (5).

UPDATE

509-514 Introduction ... Employed advocates

These provisions have effect for all purposes as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(i) Introduction/511. Legal professional privilege.

511. Legal professional privilege.

As from a day to be appointed the following provisions have effect¹. Where an individual ('P') who is not a barrister² or solicitor³:

- 401 (1) provides advocacy services as an authorised person in relation to the exercise of rights of audience⁴;
- 402 (2) provides litigation services as an authorised person in relation to the conduct of litigation⁵;
- 403 (3) provides conveyancing services as an authorised person in relation to reserved instrument activities⁶; or
- 404 (4) provides probate services as an authorised person in relation to probate activities⁷,

any communication, document⁸, material or information relating to the provision of services in question is privileged from disclosure in like manner as if P had at all material times been acting as P's client's solicitor⁹.

Where a licensed body provides services to a client and the individual ('E') through whom the body provides those services is a relevant lawyer¹⁰, or acts at the direction and under the supervision of a relevant lawyer (the 'supervisor'), any communication, document, material or information relating to the provision of the services in question is privileged from disclosure only if, and to the extent that, it would have been privileged from disclosure if the services had been provided by E or, if E is not a relevant lawyer, by the supervisor and at all material times the client had been the client of E or, if E is not a relevant lawyer, of the supervisor¹¹.

1 The Legal Services Act 2007 s 190 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'barrister' see PARA 1033.

3 As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq. As from a day to be appointed, during the relevant period, the provisions of the Legal Services Act 2007 s 190(3)-(7) apply to a body which is recognised under the Administration of Justice Act 1985 s 9 (see PARA 687 et seq) and has one or more managers who are not legally qualified (within the meaning of s 9A (see PARA 690)) as if the body were a licensed body: Legal Services Act 2007 Sch 22 para 17(1), (4). This applies whether or not the legal professional privilege provisions have been brought into force for other purposes: Sch 22 para 17(2). The relevant period is the period which begins when the Administration of Justice Act 1985 s 9A comes into force and ends when Sch 5 para 7 ceases to apply in relation to the body: Legal Services Act 2007 Sch 22 para 17(3). During a transitional period s 190(5)(h) is modified: see Sch 22 para 17(5). For the purposes of Sch 22 para 15 the 'transitional period' means the period which begins with the day on which the Administration of Justice Act 1985 ss 9, 9A, 32 and 32A (as amended and substituted by the Legal Services Act 2007 Schs 16, 17) come into force, and ends with the day appointed for the coming into force of s 13 (entitlement to carry on a reserved legal activity): Sch 22 para 15(3).

4 Legal Services Act 2007 s 190(1)(a). For these purposes 'advocacy services' means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to any proceedings, or contemplated proceedings, to provide: s 190(6). As to the meaning of 'rights of audience' see PARA 512 note 3.

5 Legal Services Act 2007 s 190(1)(b). For these purposes 'litigation services' means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in relation to any proceedings, or contemplated proceedings, to provide: s 190(6). As to the meaning of 'conduct of litigation' see PARA 512 note 4.

6 Legal Services Act 2007 s 190(1)(c). For these purposes 'conveyancing services' means the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land: s 190(6). As to the meaning of 'reserved instrument activities' see PARA 512 note 5.

7 Legal Services Act 2007 s 190(1)(d). For these purposes 'probate services' means the preparation of any papers on which to found or oppose a grant of probate or a grant of letters of administration and the administration of the estate of a deceased person: s 190(6). As to the meaning of 'probate activities' see PARA 512 note 6.

8 As to the meaning of 'document' see PARA 303 note 11.

9 Legal Services Act 2007 s 190(2). Section 190 is without prejudice to any other enactment or rule of law by virtue of which a communication, a document, material or information is privileged from disclosure: s 190(7).

10 'Relevant lawyer' means an individual who is:

- 265 (1) a solicitor (Legal Services Act 2007 s 190(5)(a));
- 266 (2) a barrister (s 190(5)(b));
- 267 (3) a solicitor in Scotland (s 190(5)(c));
- 268 (4) an advocate in Scotland (s 190(5)(d));
- 269 (5) a solicitor of the Court of Judicature of Northern Ireland (s 190(5)(e));
- 270 (6) a member of the Bar of Northern Ireland (s 190(5)(f));
- 271 (7) a registered foreign lawyer (s 190(5)(g));
- 272 (8) an individual not within heads (1)-(7) above who is an authorised person in relation to an activity which is a reserved legal activity (s 190(5)(h)); or
- 273 (9) a European lawyer (s 190(5)(i)).

As to the meaning of 'registered foreign lawyer' see the Courts and Legal Services Act 1990 s 89; and PARA 628 note 2 (definition applied by the Legal Services Act 2007 s 190(5)(g)). As to the meaning of 'European lawyer' see the European Communities (Services of Lawyers) Order 1978, SI 1978/1910; and PARA 535 (definition applied by the Legal Services Act 2007 s 190(5)(i)). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'reserved legal activities' see PARA 512.

11 Legal Services Act 2007 s 190(3), (4).

UPDATE

509-514 Introduction ... Employed advocates

These provisions have effect for all purposes as from 1 January 2010: SI 2009/3250.

511-512 Legal professional privilege, Meaning of reserved legal activity

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(ii) Reserved Legal Activities/512. Meaning of 'reserved legal activity'.

(ii) Reserved Legal Activities

512. Meaning of 'reserved legal activity'.

As from a day to be appointed the following provisions have effect¹. 'Reserved legal activity'² means:

- 405 (1) the exercise of a right of audience³;
- 406 (2) the conduct of litigation⁴;
- 407 (3) reserved instrument activities⁵;
- 408 (4) probate activities⁶;
- 409 (5) notarial activities⁷;
- 410 (6) the administration of oaths⁸.

The Lord Chancellor may, by order, amend provisions of the Legal Services Act 2007⁹ so as to add any legal activity to the activities which are reserved legal activities¹⁰.

1 The Legal Services Act 2007 ss 12, 24 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed for all purposes, but the definition of 'reserved legal activity' had been brought into force for the purposes of ss 1 (see PARA 302), 69(4)(as modified: see PARA 375), Sch 1 para 2(3)-(5) (see PARAS 304, 305), and Sch 22 para 2(6), (7)(b) (see PARA 303): see the Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, art 3. As to the Lord Chancellor see PARA 301 note 1.

2 'Legal activity' means:

- 274 (1) an activity which is a reserved legal activity within the meaning of the Legal Services Act 2007 as originally enacted (s 12(2)(a)); and
- 275 (2) any other activity which consists of one or both of the following:
 - 1. (a) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes (s 12(b)(i));
1
 - 2. (b) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes (s 12(b)(ii)).
2

However 'legal activity' does not include any activity of a judicial or quasi-judicial nature (including acting as a mediator): s 12(4). For the purposes of s 12(3) 'legal dispute' includes a dispute as to any matter of fact the resolution of which is relevant to determining the nature of any person's legal rights or liabilities: s 12(5). For the purposes of Pt 6 (ss 112-161) (and ss 1, 21, 27 as they apply in relation to Pt 6) regulated claims management services are to be treated as a reserved legal activity: s 161(1)(b). As to the meaning of 'regulated claims management services' see the Compensation Act 2006 s 4(2)(e); and **DAMAGES** (definition applied by the Legal Services Act 2007 s 161(4)). Services provided by a person which consist of or include reserved legal activities carried on by, or on behalf of, that person are 'reserved legal services' for the purposes of the Legal Services Act 2007: see s 207(1).

3 Legal Services Act 2007 s 12(1)(a). 'Right of audience' means the right to appear before and address a court, including the right to call and examine witnesses, but it does not include a right to appear before or address a court, or to call or examine witnesses, in relation to any particular court or in relation to particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to exercise that right: Sch 2 para 3. For the purposes of Sch 2 'appointed day' means the day appointed for the

coming into force of s 13 (see PARA 509): Sch 2 para 2. At the date at which this volume states the law no such day had been appointed. As to the overriding duty a person exercising a right of audience owes to the court see PARA 513. As to employed advocates see PARA 514. As to when a person is exempt for the purposes of the right of audience see Sch 3 para 1; and PARA 517. As to bodies which are approved regulators in relation to the right of audience see PARAS 359-360. As to the meaning of 'court' see PARA 302 note 13. As to the meaning of 'approved regulator' see PARA 358.

4 Legal Services Act 2007 s 12(1)(b). 'Conduct of litigation' means the issuing of proceedings before any court in England and Wales, the commencement, prosecution and defence of such proceedings and the performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions): Sch 2 para 4(1). However 'conduct of litigation' does not include any activity, in relation to any particular court or in relation to any particular proceedings, if immediately before the appointed day no restriction was placed on the persons entitled to carry on that activity: Sch 2 para 4(2). As to the overriding duty a person conducting litigation owes to the court see PARA 513. As to when a person is exempt for the purposes of carrying on any activity which constitutes the conduct of litigation see Sch 3 para 2; and PARA 518. As to bodies which are approved regulators in relation to the conduct of litigation see PARAS 359-360.

5 Legal Services Act 2007 s 12(1)(c). 'Reserved instrument activities' means:

- 276 (1) preparing any instrument of transfer or charge for the purposes of the Land Registration Act 2002 (see **LAND REGISTRATION**) (Legal Services Act 2007 Sch 2 para 5(1)(a));
- 277 (2) making an application or lodging a document for registration under the Land Registration Act 2002 (Legal Services Act 2007 Sch 2 para 5(1)(b));
- 278 (3) preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales (Sch 2 para 5(1)(c)).

However 'reserved instrument activities' does not include the preparation of an instrument relating to any particular court proceedings if, immediately before the appointed day, no restriction was placed on the persons entitled to carry on that activity: Sch 2 para 5(2). As to when a person is exempt for the purposes of carrying on any activity which constitutes reserved instrument activities see Sch 3 para 3; and PARA 519. As to bodies which are approved regulators in relation to reserved instrument activities see PARAS 359-360.

6 Legal Services Act 2007 s 12(1)(d). 'Probate activities' means preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales: Sch 2 para 6(1). For these purposes 'probate papers' means papers on which to found or oppose a grant of probate or a grant of letters of administration: Sch 2 para 6(2). As to when a person is exempt for the purposes of carrying on any activity which constitutes probate activities see Sch 3 para 3; and PARA 519. As to bodies which are approved regulators in relation to probate activities see PARAS 359-360.

7 Legal Services Act 2007 s 12(1)(e). 'Notarial activities' means activities which, immediately before the appointed day, were customarily carried on by virtue of enrolment as a notary in accordance with the Public Notaries Act 1801 s 1 (see PARA 1418): Legal Services Act 2007 Sch 2 para 7(1). Schedule 2 para 7(1) does not include activities carried on by virtue of the Solicitors Act 1974 ss 22, 23 (see PARAS 592, 595) or by virtue of the Courts and Legal Services Act 1990 s 113 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 1026): Legal Services Act 2007 Sch 2 para 7(2). As to when a person is exempt for the purposes of carrying on any activity which constitutes notarial activities see Sch 3 para 3; and PARA 519. As to bodies which are approved regulators in relation to notarial activities see PARAS 359-360.

8 Legal Services Act 2007 s 12(1)(f). 'Administration of oaths' means the exercise of the powers conferred on a commissioner for oaths by the Commissioners for Oaths Act 1889 (see **CIVIL PROCEDURE** vol 11 (2009) PARAS 1026-1027), the Commissioners for Oaths Act 1891 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 1027), the Stamp Duties Management Act 1891 s 24 (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) para 1110): Legal Services Act 2007 Sch 2 para 8. As to when a person is an exempt person for the purposes of the administration of oaths see Sch 3 para 6; and PARA 522. As to bodies which are approved regulators in relation to the administration of oaths see PARAS 359-360.

9 Ie amend the Legal Services Act 2007 s 12.

10 Legal Services Act 2007 s 24(1).

UPDATE

509-514 Introduction ... Employed advocates

These provisions have effect for all purposes as from 1 January 2010: SI 2009/3250.

511-512 Legal professional privilege, Meaning of reserved legal activity

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(ii) Reserved Legal Activities/513. Duties of advocates and litigators.

513. Duties of advocates and litigators.

As from a day to be appointed the following provisions have effect¹. Where a person exercises before any court² a right of audience³, or conducts litigation⁴ in relation to proceedings⁵ in any court, by virtue of being an authorised person in relation to the activity in question⁶, then that person has a duty to the court in question to act with independence in the interests of justice⁷. That duty, and the duty to comply with relevant conduct rules⁸ override any obligations which the person may have (otherwise than under the criminal law) if they are inconsistent with them⁹.

1 The Legal Services Act 2007 s 188 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'court' see PARA 302 note 13.

3 As to the exercise of rights of audience see PARA 512 note 3.

4 As to the meaning of 'conduct of litigation' see PARA 512 note 4.

5 As to the meaning of 'proceedings' see PARA 327 note 6.

6 Legal Services Act 2007 s 188(1). See note 1. As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

7 Legal Services Act 2007 s 188(2). See note 1.

8 The relevant conduct rules imposed by the Legal Services Act 2007 s 176(1) (see PARA 384); s 188(3). 'Relevant conduct rules' are the conduct rules of the relevant authorising body which relate to the exercise of a right of audience or the conduct of litigation: s 188(4). As to the meaning of 'conduct rules' see PARA 377 note 5.

The relevant authorising body is:

279 (1) the approved regulator by which the person is authorised to exercise the right of audience or conduct the litigation (s 188(5)(a)); or

280 (2) where the person is authorised to exercise the right of audience or conduct the litigation by the Legal Services Board in its capacity as a licensing authority, the Board (s 188(5)(b)).

As to the meaning of 'approved regulator' see PARA 358. See also note 1. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

9 Legal Services Act 2007 s 188(3). See note 1.

UPDATE

509-514 Introduction ... Employed advocates

These provisions have effect for all purposes as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(ii) Reserved Legal Activities/514. Employed advocates.

514. Employed advocates.

As from a day to be appointed the following provisions have effect¹. Where an authorised person² in relation to the exercise of a right of audience³ is employed as a Crown Prosecutor or in any other description of employment⁴ then qualification regulations or conduct rules⁵ of the approved regulator⁶ by whom the person is authorised to carry on that activity which relate to the right of audience do not have effect in relation to the person if they⁷:

- 411 (1) limit the courts before which, or proceedings in which, that activity may be carried on by persons who are employed⁸, or limit the circumstances in which that activity may be carried on by persons who are employed by requiring such persons to be accompanied by some other person when carrying on that activity⁹; and
- 412 (2) do not impose the same limitation on persons who are authorised persons in relation to the activity in question but are not employed¹⁰.

1 The Legal Services Act 2007 s 189 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515.

3 As to the exercise of rights of audience see PARA 512 note 3.

4 Legal Services Act 2007 s 189(1). See note 1.

5 As to the meanings of 'qualification regulations' and 'conduct rules' see PARA 377 notes 5, 7.

6 As to the meaning of 'approved regulator' see PARA 358. See also note 1.

7 Legal Services Act 2007 s 189(2). See note 1.

8 Legal Services Act 2007 s 189(2)(a)(i). See note 1.

9 Legal Services Act 2007 s 189(2)(a)(ii). See note 1.

10 Legal Services Act 2007 s 189(2)(b). See note 1.

UPDATE

509-514 Introduction ... Employed advocates

These provisions have effect for all purposes as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iii) Authorised Persons/515. Authorised persons.

(iii) Authorised Persons

515. Authorised persons.

As from a day to be appointed the following provisions apply¹. A person is entitled to carry on a relevant activity which is a reserved legal activity² where the person is an authorised person in relation to the relevant activity³. For the purposes of the Legal Services Act 2007 an 'authorised person', in relation to an activity (the 'relevant activity') which is a reserved legal activity, means:

- 413 (1) a person who is authorised to carry on the relevant activity by a relevant approved regulator⁴ in relation to the relevant activity (other than by virtue of a licence under the Legal Services Act 2007 Part 5)⁵; or
- 414 (2) a licensable body which, by virtue of such a licence, is authorised to carry on the relevant activity by a licensing authority in relation to the reserved legal activity⁶.

However in the case of a person who is authorised by a listed body⁷ to exercise any right of audience before a court in relation to any proceedings or to conduct litigation in relation to any proceedings, it is irrelevant whether the person's authorisation was granted before or on or after the appointed day⁸. Likewise in the case of a licensed conveyancer who is authorised to carry on an activity which is a reserved instrument activity by a conveyancing licence⁹, it is irrelevant whether the licence was granted before or on or after the day on which the provisions entitling a person to carry on a reserved legal activity come into force¹⁰.

1 The Legal Services Act 2007 s 18 and Sch 5 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activity' see PARA 512. The following applies for the interpretation of references in the Legal Services Act 2007 to a person carrying on an activity which is a reserved legal activity: s 15(1). References to a person carrying on an activity which is a reserved legal activity include a person ('E') who is an employee of a person ('P') and carries on the activity in E's capacity as such an employee: s 15(2). It is irrelevant whether P is entitled to carry on the activity: s 15(3). P does not carry on an activity (the 'relevant activity') which is a reserved legal activity by virtue of E carrying it on in E's capacity as an employee of P, unless the provision of relevant services to the public or a section of the public (with or without a view to profit) is part of P's business: s 15(4). Relevant services are services which consist of or include the carrying on of the relevant activity by employees of P in their capacity as employees of P: s 15(5). Where P is an independent trade union, persons provided with relevant services do not constitute the public or a section of the public where:

- 281 (1) the persons are provided with the relevant services by virtue of their membership or former membership of P or of another person's membership or former membership of P (s 15(6)(a)); and
- 282 (2) the services are excepted membership services (s 15(6)(b)).

'Excepted membership services' means relevant services which relate to or have a connection with:

- 283 (a) relevant activities of a member, or former member, of the independent trade union (s 15(7)(a));

- 284 (b) any other activities carried on for the purposes of or in connection with, or arising from, such relevant activities (s 15(7)(b));
- 285 (c) any event which has occurred (or is alleged to have occurred) in the course of or in connection with such relevant activities or activities within head (b) (s 15(7)(c));
- 286 (d) activities carried on by a person for the purposes of or in connection with, or arising from, the person's membership of the independent trade union (s 15(7)(d));

and such other relevant services as the Lord Chancellor may by order specify: s 15(7).

In s 15(7) 'relevant activities', in relation to a person who is or was a member of an independent trade union, means any employment (including self-employment), trade, occupation or other activity to which the person's membership of the trade union relates or related: s 15(12).

The Lord Chancellor may by order make provision about the circumstances in which relevant services do or do not relate to, or have a connection with, the matters mentioned in heads (a)-(d) above: s 15(8).

Subject to that, the Lord Chancellor may by order make provision about:

- 287 (i) what does or does not constitute a section of the public (s 15(9)(a));
- 288 (ii) the circumstances in which the provision of relevant services to the public or a section of the public does or does not form part of P's business (s 15(9)(b)).

If P is a body, references to an employee of P include references to a manager of P: s 15(11). The Lord Chancellor may make an order under the above provisions only on the recommendation of the Legal Services Board: s 15(10). As to the meaning of 'manager' see PARA 369 note 17. At the date at which this volume states the law no such day had been appointed.

3 See the Legal Services Act 2007 s 13(2)(a); and PARA 509. For the purposes of Pt 6 (ss 112-161) a person authorised by the Claims Management Services Regulator under the Compensation Act 2006 Pt 2 (ss 4-15) to provide regulated claims management services is to be treated as an authorised person in relation to that activity and the Claims Management Services Regulator is to be treated as a relevant authorising body in relation to such a person: Legal Services Act 2007 s 161(1)(c), (d). As to the meaning of 'Claims Management Services Regulator' see PARA 358 note 4. As from a day to be appointed an authorised person in relation to an activity which is a reserved legal activity is an authorised person for the purposes of the Administration of Justice Act 1985 s 9 (see s 9(8) (definition added by the Legal Services Act 2007 Sch 16 para 81(10)(b))), the Administration of Justice Act 1985 s 9A (definition applied by virtue of s 9A(8) (added by the Legal Services Act 2007 Sch 16 para 82)), the Administration of Justice Act 1985 Sch 2 para 23 (see the Administration of Justice Act 1985 Sch 2 para 23(2) (prospectively added by the Legal Services Act 2007 Sch 16 para 110(d))), the Solicitors Act 1974 s 56 (see s 56(5A) (prospectively added by the Legal Services Act 2007 Sch 16 para 54(7))), the Solicitors Act 1974 s 66(b). At the date at which this volume states the law no such day had been appointed.

4 As to the meaning of 'relevant approved regulator' see PARA 358.

5 Legal Services Act 2007 s 18(1)(a). As to a licence under Pt 5 (ie ss 71-111) see PARA 1476 et seq. A licensable body may not be authorised to carry on the relevant activity as mentioned in s 18(1)(a): s 18(2). But where a body ('A') which is authorised as mentioned in s 18(1)(a) becomes a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events:

- 289 (1) the end of the period of 90 days beginning with the day on which that time falls (s 18(3)(a));
- 290 (2) the time from which the relevant approved regulator determines this subsection is to cease to apply to A (s 18(3)(b));
- 291 (3) the time when A ceases to be a licensable body (s 18(3)(c)).

Section 18(2) is subject to Sch 5 Pt 2 (by virtue of which licensable bodies may be deemed to be authorised as mentioned in s 18(1)(a) in relation to certain activities during a transitional period): s 18(4).

6 Legal Services Act 2007 s 18(1)(b). A person other than a licensable body may not be authorised to carry on the relevant activity as mentioned in s 18(1)(b): s 18(5). But where a body ('L') which is authorised as mentioned in s 18(1)(b) ceases to be a licensable body, the body is deemed by virtue of this subsection to continue to be so authorised from that time until the earliest of the following events:

292 (1) the end of the period of 90 days beginning with the day on which that time falls (s 18(6)(a));

293 (2) the time from which the relevant licensing authority determines this subsection is to cease to apply to L (s 18(6)(b));

294 (3) the time when L becomes a licensable body (s 18(6)(c)).

As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

7 The 'listed bodies' are:

295 (1) the Solicitors Regulation Authority (Legal Services Act 2007 Sch 5 para 1(2)(a));

296 (2) the Bar Standards Board (Sch 5 para 1(2)(b));

297 (3) the Chartered Institute of Patent Attorneys (see **PATENTS AND REGISTERED DESIGNS**) (Sch 5 para 1(2)(c));

298 (4) the Institute of Trade Mark Attorneys (see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) para 40) (Sch 5 para 1(2)(d)); and

299 (5) for the purposes of conducting litigation in relation to any proceedings, the Institute of Legal Executives (see PARA 1319 et seq) (Sch 5 para 1(2)(e)).

The Legal Services Act 2007 Sch 5 para 1(2)(a) (see head (1) above) refers to the Law Society, and para 1(2)(b) refers to the General Council of the Bar (see head (2) above). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619 et seq), and the body responsible for the regulation of Barristers is the Bar Standards Board (see PARA 1049).

8 Legal Services Act 2007 Sch 5 para 1(1). For the purposes of Sch 5 para 1(1), any authority conferred by the Courts and Legal Services Act 1990 s 31 (see PARAS 732, 1109) is to be disregarded: Legal Services Act 2007 Sch 5 para 1(3). For the purposes of Sch 5 'appointed day' means the day appointed for the coming into force of s 13 (see PARA 509); Sch 5 para 19(1). As to the meaning of 'court' see PARA 302 note 13.

9 'Conveyancing licence' means a licence to practise as a licensed conveyancer granted under the Administration of Justice Act 1985 Pt 2 (ss 11-39) (see PARA 1319 et seq): Legal Services Act 2007 Sch 5 para 2(2).

10 Legal Services Act 2007 Sch 5 para 2(1).

UPDATE

515 Authorised persons

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 18(1)(a) and Sch 5 (subject to transitional provision) is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/516. Exempt persons.

(iv) Exempt Persons

516. Exempt persons.

As from a day to be appointed the following provisions have effect¹. A person is entitled to carry on an activity (the 'relevant activity') which is a reserved legal activity² where the person is an exempt person in relation to that activity³. 'Exempt person' in relation to a relevant activity which is a reserved legal activity means a person who for the purposes of carrying on the relevant activity is an exempt person by virtue of provisions of the Legal Services Act 2007⁴.

A person may be an exempt person in relation to:

- 415 (1) exercising a right of audience⁵;
- 416 (2) any activity which constitutes the conduct of litigation⁶;
- 417 (3) any activity which constitutes reserved instrument activities⁷;
- 418 (4) any activity which constitutes probate activities⁸;
- 419 (5) any activity which constitutes notarial activities⁹;
- 420 (6) any activity which constitutes the administration of oaths¹⁰.

Furthermore the Lord Chancellor may, by order¹¹, provide for persons to be exempt persons in relation to an activity which is a reserved legal activity¹², for persons to cease to be such persons or for the amendment of any provision made in respect of an exempt person¹³.

1 The Legal Services Act 2007 s 19 and Sch 3 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activity' see PARA 512.

3 See the Legal Services Act 2007 s 13(2)(b); and PARA 900.

4 Legal Services Act 2007 s 19. The provisions referred to in the text are Sch 3 (see PARAS 517-524) or Sch 5 para 13, 18 (see PARAS 516, 581). A European lawyer is an exempt person for the purpose of reserved legal activities he is entitled to carry on: see Sch 3 para 7; and PARA 523.

5 See the Legal Services Act 2007 Sch 3 para 1; and PARA 517.

6 See the Legal Services Act 2007 Sch 3 para 2; and PARA 518.

7 See the Legal Services Act 2007 Sch 3 para 3; and PARA 519.

8 See the Legal Services Act 2007 Sch 3 para 4; and PARA 520.

9 See the Legal Services Act 2007 Sch 3 para 5; and PARA 521. During the transitional period, a person ('P') is an exempt person in relation to the carrying on of an activity (the 'relevant activity') which is a notarial activity if:

300 (1) P carries on the relevant activity by virtue of an employee of P ('E') carrying it on in E's capacity as such an employee (Sch 5 para 13(1)(a)); and

301 (2) E is an authorised person in relation to the relevant activity (Sch 5 para 13(1)(b)).

If P is a body the reference above to an employee of P includes references to a manager of P: Sch 5 para 13(2). 'Transitional period' is the period which begins with the appointed day and ends with the day appointed by the Lord Chancellor by order for the purposes of the Legal Services Act 2007 Sch 5 para 3: Sch 5 para 3(1). Different days may be appointed by the Lord Chancellor for different purposes: Sch 5 para 3(2). An order made by the Lord Chancellor for these purposes may only be made on the recommendation of the Legal Services Board: Sch 5 para 3(3). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'appointed day' see PARA 515 note 8.

10 See the Legal Services Act 2007 Sch 3 para 6; and PARA 522. As to the meaning of 'administration of oaths' see PARA 512 note 8.

11 Such orders will amend the Legal Services Act 2007 Sch 3 (see PARAS 517-524). The Lord Chancellor may make an order under Sch 3 para 9(1) only on the recommendation of the Legal Services Board: Sch 3 para 9(2). At the date at which this volume states the law no such orders had been made. As to the Legal Services Board see s 2; and PARAS 303-326.

12 This includes any activity which is a reserved legal activity by virtue of an order under the Legal Services Act 2007 s 24 (see PARA 525).

13 Legal Services Act 2007 Sch 3 para 9(1).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/517. Rights of audience.

517. Rights of audience.

As from a day to be appointed the following provisions have effect¹. A person is an exempt person² for the purpose of exercising a right of audience³ before a court in relation to any proceedings⁴ if the person:

- 421 (1) is not an authorised person in relation to that activity⁵ but has a right of audience granted by that court in relation to those proceedings⁶;
- 422 (2) is not an authorised person in relation to that activity but has a right of audience before that court in relation to those proceedings granted by or under any enactment⁷;
- 423 (3) is the Attorney General or the Solicitor General and the name of the person is on the roll kept by the Solicitors Regulation Authority⁸ or that person has been called to the Bar by an Inn of Court⁹;
- 424 (4) is the Advocate General for Scotland and is admitted as a solicitor in Scotland¹⁰ or to practise as an advocate before the courts of Scotland¹¹;
- 425 (5) is a party to those proceedings and would have a right of audience, in the person's capacity as such a party, if the Legal Services Act 2007 had not been passed¹²;
- 426 (6) is an individual whose work includes assisting in the conduct of litigation¹³, the person is assisting in the conduct of litigation¹⁴ and the proceedings are being heard in chambers in the High Court or a county court and are not reserved family proceedings¹⁵.

1 The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'exempt person' see PARA 516. A person is an exempt person in relation to the exercise of a right of audience in proceedings on an appeal from the Comptroller-General of Patents, Designs and Trade Marks to the Patents Court under the Patents Act 1977 (see **PATENTS AND REGISTERED DESIGNS**), if the person is a solicitor of the Court of Judicature of Northern Ireland: Legal Services Act 2007 Sch 3 para 1(9).

3 As to the meaning of 'right of audience' see PARA 512 note 3.

4 Legal Services Act 2007 Sch 3 para 1(1). This is subject to Sch 2 para 7 (see PARA 512). As to the meaning of 'court' see PARA 302 note 13.

5 As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515.

6 Legal Services Act 2007 Sch 3 para 1(2).

7 Legal Services Act 2007 Sch 3 para 1(3).

8 ie the roll kept under the Solicitors Act 1974 s 6 (see PARA 621). The Legal Services Act 2007 Sch 3 refers to the Law Society. However in practice the body responsible for keeping the roll is the Solicitors Regulation Authority: see PARA 619 et seq.

9 Legal Services Act 2007 Sch 3 para 1(4). As to when a person has been called to the Bar by an Inn of Court see PARA 1075 et seq.

10 le admitted under the Solicitors (Scotland) Act 1980 s 6.

11 Legal Services Act 2007 Sch 3 para 1(5).

12 Legal Services Act 2007 Sch 3 para 1(6).

13 As to the meaning of 'conduct of litigation' see PARA 512 note 4.

14 le under instructions given (either generally or in relation to the proceedings) by an individual to whom the Legal Services Act 2007 Sch 3 para 1(8) applies and under the supervision of that individual: Sch 3 para 1(7)(b). Schedule 3 para 1(8) applies to: (1) any authorised person in relation to an activity which constitutes the conduct of litigation; (2) any person who by virtue of s 193 (see PARA 642) is not required to be entitled to carry on such an activity: Sch 3 para 1(8).

15 Legal Services Act 2007 Sch 3 para 1(7). For these purposes 'family proceedings' has the same meaning as in the Matrimonial and Family Proceedings Act 1984 (see **MATRIMONIAL AND CIVIL PARTNERSHIP LAW** vol 73 (2009) PARA 737) and also includes any other proceedings which are family proceedings for the purposes of the Children Act 1989 (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 301): Legal Services Act 2007 Sch 3 para 9(10). 'Reserved family proceedings' means such category of family proceedings as the Lord Chancellor may, after consulting the President of the Law Society and with the concurrence of the President of the Family Division, by order prescribe: Sch 3 para 9(10). At the date at which this volume states the law no such orders had been made. Any order made under the Courts and Legal Services Act 1990 s 27(9) (see PARA 497) before the day appointed for the coming into force of Sch 3 para 1 is to have effect on and after that day as if it were an order made under Sch 3 para 1(10): Sch 3 para 1(10).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/518. Conduct of litigation.

518. Conduct of litigation.

As from a day to be appointed the following provisions have effect¹. A person is an exempt person² for the purpose of carrying on any activity which constitutes the conduct of litigation³ in relation to any proceedings⁴ if the person:

427 (1) is not an authorised person in relation to that activity⁵ but has a right to conduct litigation granted by a court in relation to those proceedings⁶;

428 (2) is not an authorised person in relation to that activity but has a right to conduct litigation in relation to those proceedings granted by or under any enactment⁷;

429 (3) is a party to those proceedings and would have a right to conduct the litigation, in the person's capacity as such a party, if the Legal Services Act 2007 had not been passed⁸.

1 The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'exempt person' see PARA 516. The person is an exempt person in relation to any activity which is carried on in or in connection with proceedings on an appeal from the Comptroller-General of Patents, Designs and Trade Marks to the Patents Court under the Patents Act 1977 (see **PATENTS AND REGISTERED DESIGNS**), if the person is a solicitor of the Court of Judicature of Northern Ireland: Legal Services Act 2007 Sch 3 para 2(5).

3 As to the meaning of 'conduct of litigation' see PARA 512 note 4.

4 Legal Services Act 2007 Sch 3 para 2(1). This is subject to Sch 2 para 7 (see PARA 512).

5 As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515.

6 Legal Services Act 2007 Sch 3 para 2(2). As to the meaning of 'court' see PARA 302 note 13.

7 Legal Services Act 2007 Sch 3 para 2(3).

8 Legal Services Act 2007 Sch 3 para 2(4).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/519. Reserved instrument activities.

519. Reserved instrument activities.

As from a day to be appointed the following provisions have effect¹. A person is an exempt person² for the purpose of carrying on any activity which constitutes reserved instrument activities³:

- 430 (1) if the person prepares the instruments or applications in the course of the person's duty as a public officer⁴;
- 431 (2) if the person is an individual ('E'), who carries on the activity at the direction and under the supervision of another person ('P'), when E does so, P and E are connected⁵ and P is entitled to carry on the activity, otherwise than by virtue of head (6)⁶;
- 432 (3) if the person is an accredited person⁷, the person is exempt to the extent that the activity consists of the preparation of any instrument:
- 3
 - 4. (a) which creates, or which the person believes on reasonable grounds will create, a farm business tenancy⁸; or
 - 5. (b) which relates to an existing tenancy which is, or which the person believes on reasonable grounds to be, such a tenancy⁹;
- 4
 - 433 (4) to the extent that the activity carried on by the person is also the reserved legal activity of exercising the right of audience or conducting litigation and the person is:
- 5
 - 6. (a) authorised to carry on that activity (other than under the Legal Services Act 2007 Part 5¹⁰) by a relevant approved regulator in relation to the activity¹¹;
 - 7. (b) authorised to carry on that activity by a licence under the Legal Services Act 2007 Part 5¹²; or
 - 8. (c) an exempt person in relation to that activity by virtue of particular provisions of the Legal Services Act 2007¹³;
- 6
 - 434 (5) if the person is employed merely to engross the instrument or application¹⁴;
 - 435 (6) if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward¹⁵;
 - 436 (7) if the person is a person qualified to practise as a solicitor in Scotland¹⁶; and
 - 437 (8) the reserved instrument activities relate to the preparing any other instrument relating to real or personal estate for the purposes of the law of England and Wales or instrument relating to court proceedings in England and Wales¹⁷.

¹ The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the meaning of 'exempt person' see PARA 516.

³ Legal Services Act 2007 Sch 3 para 3(1). This is subject to Sch 2 para 7 (see PARA 512). As to the meaning of 'reserved instrument activities' see PARA 512 note 5.

4 Legal Services Act 2007 Sch 3 para 3(2).

5 For the purposes of the Legal Services Act 2007 Sch 3 para 3(3), P and E are connected if:

302 (1) P is E's employer (Sch 3 para 3(4)(a));

303 (2) P is a fellow employee of E (Sch 3 para 3(4)(b));

304 (3) P is a manager or employee of a body which is an authorised person in relation to the activity, and E is also a manager or employee of that body (Sch 3 para 3(4)(c)).

As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'manager' see PARA 369 note 17.

6 Legal Services Act 2007 Sch 3 para 3(4).

7 For this purpose 'accredited person' means a person who is a Fellow of the Central Association of Agricultural Valuers or a Member or Fellow of the Royal Institution of Chartered Surveyors: Legal Services Act 2007 Sch 3 para 3(6).

8 le within the meaning of the Agricultural Tenancies Act 1995 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 302).

9 Legal Services Act 2007 Sch 3 para 3(5).

10 Legal Services Act 2007 ss 71-111.

11 Legal Services Act 2007 Sch 3 para 3(7)(a), (8). As to the meaning of 'relevant approved regulator' see PARA 358.

12 Legal Services Act 2007 Sch 3 para 3(7)(b), (8).

13 Legal Services Act 2007 Sch 3 para 3(7)(c), (8). The provisions mentioned in the text refer to Sch 3 paras 1, 2 (see PARAS 517-518).

14 Legal Services Act 2007 Sch 3 para 3(9).

15 Legal Services Act 2007 Sch 3 para 3(10).

16 Legal Services Act 2007 Sch 3 para 3(11)(a).

17 Legal Services Act 2007 Sch 3 para 3(11)(b). The reserved instrument activities mentioned in the text refer to reserved instrument activities falling within Sch 2 para 5(1)(c) (see PARA 512). As to the meaning of 'court' see PARA 302 note 13.

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/520. Probate activities.

520. Probate activities.

As from a day to be appointed the following provisions have effect¹. A person is an exempt person² for the purpose of carrying on any activity which constitutes probate activities³:

- 438 (1) if:
- 7
- 9. (a) the person ('E') is an individual⁴;
 - 10. (b) E provides probate activities at the direction and under the supervision of another individual ('P')⁵;
 - 11. (c) when he does so P and E are connected⁶; and
 - 12. (d) P is entitled to carry on the activity, otherwise than for, or in expectation of, any fee, gain or reward⁷;
- 8
- 439 (2) if the person is an individual who carries on the activity otherwise than for, or in expectation of, any fee, gain or reward⁸.

1 The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'exempt person' see PARA 516.

3 Legal Services Act 2007 Sch 3 para 4(1). This is subject to Sch 2 para 7 (see PARA 512). As to the meaning of 'probate activities' see PARA 512 note 6.

4 Legal Services Act 2007 Sch 3 para 4(2)(a).

5 Legal Services Act 2007 Sch 3 para 4(2)(b).

6 Legal Services Act 2007 Sch 3 para 4(2)(c). For the purposes of Sch 3 para 4(2), P and E are connected if:

305 (1) P is E's employer (Sch 3 para 4(3)(a));

306 (2) P is a fellow employee of E (Sch 3 para 4(3)(b));

307 (3) P is a manager or employee of a body which is an authorised person in relation to the activity, and E is also a manager or employee of that body (Sch 3 para 4(3)(c), (4)).

As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'manager' see PARA 369 note 17.

7 Legal Services Act 2007 Sch 3 para 4(2)(d).

8 Legal Services Act 2007 Sch 3 para 4(4).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/521. Notarial activities.

521. Notarial activities.

As from a day to be appointed the following provisions have effect¹. A person is an exempt person² for the purpose of carrying on any activity which constitutes notarial activities³:

- 440 (1) if the person is not an authorised person in relation to that activity under the Legal Services Act 2007, but is authorised to carry on that activity by or by virtue of any other enactment⁴;
- 441 (2) if certain provisions of the Public Notaries Act 1801⁵ apply to the person, and:
 - 13. (a) where they apply by virtue of the person holding or exercising an office or appointment, the person carries on the activity for ecclesiastical purposes⁶;
 - 14. (b) where they apply by virtue of the person performing a public duty or service under government, the person carries on the activity in the course of performing that duty or service⁷;
- 442 (3) if the person is an individual who carries on the notarial activities otherwise than for or in expectation of a fee, gain or reward⁸.

¹ The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the meaning of 'exempt person' see PARA 516.

³ Legal Services Act 2007 Sch 3 para 5(1). This is subject to Sch 2 para 7 (see PARA 512). As to the meaning of 'notarial activities' see PARA 512 note 7.

⁴ Legal Services Act 2007 Sch 3 para 5(2). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

⁵ The Public Notaries Act 1801 s 14 (see PARA 1423).

⁶ Legal Services Act 2007 Sch 3 para 5(3)(a).

⁷ Legal Services Act 2007 Sch 3 para 5(3)(b).

⁸ Legal Services Act 2007 Sch 3 para 5(4).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/522. Administration of oaths.

522. Administration of oaths.

As from a day to be appointed the following provisions have effect¹. A person is an exempt person² for the purpose of carrying on any activity which constitutes the administration of oaths³:

- 443 (1) if the person is not an authorised person in relation to that activity under the Legal Services Act 2007, but is authorised to carry on that activity by or by virtue of any other enactment⁴;
- 444 (2) the person is exempt if the person has a commission under certain provisions of the Commissioners for Oaths Act 1889⁵.

1 The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'exempt person' see PARA 516.

3 Legal Services Act 2007 Sch 3 para 6(1). This is subject to Sch 2 para 7 (see PARA 512). As to the meaning of 'administration of oaths' see PARA 512 note 8.

4 Legal Services Act 2007 Sch 3 para 6(2). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

5 Legal Services Act 2007 Sch 3 para 6(3). The provisions mentioned in the text refer to the Commissioners for Oaths Act 1889 s 1(1) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 1026).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/523. European lawyers.

523. European lawyers.

As from a day to be appointed the following provisions have effect¹. A European lawyer² is an exempt person³ for the purposes of carrying on an activity which is a reserved legal activity⁴ and which he is entitled to carry on⁵.

1 The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie within the meaning of the European Communities (Services of Lawyers) Order 1978, SI 1978/1910 (see PARAS 536-540).

3 As to the meaning of 'exempt person' see PARA 516.

4 As to the meaning of 'reserved legal activity' see PARA 512.

5 Legal Services Act 2007 Sch 3 para 7. Ie an activity which he is entitled to carry on by virtue of the European Communities (Services of Lawyers) Order 1978, SI 1978/1910 (see PARAS 536-540): Legal Services Act 2007 Sch 3 para 7.

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(iv) Exempt Persons/524. Employer of exempt person.

524. Employer of exempt person.

As from a day to be appointed the following provisions have effect¹. Where:

- 445 (1) a person ('P') carries on an activity (the 'relevant activity') which is a reserved legal activity²;
- 446 (2) P carries on the relevant activity by virtue of an employee of P ('E') carrying it on in E's capacity as such an employee³; and
- 447 (3) E is an exempt person in relation to the relevant activity⁴,

P is an exempt person in relation to the relevant activity to the extent that P carries on that activity by virtue of E so carrying it on⁵.

However the above provisions do not apply where E carries on the relevant activity at the direction and under the supervision of an authorised person in relation to that activity and is exempt⁶ in relation to that activity⁷.

¹ The Legal Services Act 2007 Sch 3 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² Legal Services Act 2007 Sch 3 para 8(1)(a). As to the meaning of 'reserved legal activity' see PARA 512. If P is a body, for these purposes, references to an employee of P include references to a manager of P: Sch 3 para 8(4). As to the meaning of 'manager' see PARA 369 note 17.

³ Legal Services Act 2007 Sch 3 para 8(1)(b).

⁴ Legal Services Act 2007 Sch 3 para 8(1)(c).

⁵ Legal Services Act 2007 Sch 3 para 8(2).

⁶ Ie by virtue of the Legal Services Act 2007 Sch 3 para 1(7), 3(3) or 4(2) (see PARAS 517, 519-520). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

⁷ Legal Services Act 2007 Sch 3 para 8(3).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/525. Extension of the reserved legal activities.

(v) Alteration of Reserved Legal Activities

525. Extension of the reserved legal activities.

As from a day to be appointed the following provisions take effect¹. An order to add any legal activity to the activities which are reserved legal activities² may be made by the Lord Chancellor³ but only on the recommendation of the Legal Services Board⁴. A person may request the Board hold an investigation with a view to determining whether or not the Board should make such a recommendation (a 'section 24 investigation') in respect of a legal activity⁵.

1 The Legal Services Act 2007 s 24, Sch 6 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie an order under the Legal Services Act 2007 s 24(1) (see PARA 512) to amend s 12 (see PARA 512) or Sch 2 (see PARAS 512, 1412). As to the meaning of 'reserved legal activities' see PARA 512.

3 See the Legal Services Act 2007 s 24(1); and PARA 512.

4 Legal Services Act 2007 s 24(2). As to the Legal Services Board see s 2; and PARAS 303-326. Where a recommendation is made in relation to an activity, the Lord Chancellor must:

308 (1) consider the report containing the recommendation given to the Lord Chancellor under Sch 6 para 16(3)(a) (see PARA 533) (s 24(4)(a));

309 (2) decide whether or not to make an order under s 24 in respect of the activity (s 24(4)(b));
and

310 (3) publish a notice of that decision (s 24(4)(c)),

within the period of 90 days beginning with the day on which the report was given to the Lord Chancellor: s 24(4).

Where the Lord Chancellor decides not to make an order under s 24 in respect of an activity, the notice under s 24(4)(c) must state the reasons for that decision: s 24(5).

5 Legal Services Act 2007 Sch 6 paras 1, 2(1)(a), (3). The request must be made in writing: Sch 6 para 2(2).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/526. Recommendations that activities should cease to be reserved legal activities.

526. Recommendations that activities should cease to be reserved legal activities.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may recommend that an activity should cease to be a reserved legal activity³ and the Lord Chancellor must consider any such recommendation⁴. Where the Lord Chancellor disagrees with a recommendation (or any part of it), the Lord Chancellor must publish a notice to that effect which must include the Lord Chancellor's reasons for disagreeing⁵.

A person may request the Board hold an investigation with a view to determining whether or not the Board should make such a recommendation (a 'section 26 investigation') in respect of an activity⁶.

1 The Legal Services Act 2007 s 26 and Sch 6 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 s 26(1). As to the meaning of 'reserved legal activity' see PARA 512.

4 Legal Services Act 2007 s 26(3). However nothing in s 208 authorises the Lord Chancellor to give effect to such a recommendation: s 26(3).

5 Legal Services Act 2007 s 26(4). As to notices generally see PARA 303 note 11.

6 Legal Services Act 2007 Sch 6 paras 1, 2(1)(b). The request must be made in writing: Sch 6 para 2(2).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/527. Preliminary inquiries.

527. Preliminary inquiries.

As from a day to be appointed the following provisions have effect¹. Where the Legal Services Board² receives a request to hold an investigation³ in respect of an activity from the Lord Chancellor, the Office of Fair Trading⁴, the Consumer Panel⁵ or the Lord Chief Justice⁶ the Board must:

- 448 (1) carry out such inquiries as it considers appropriate to enable it to determine whether it is appropriate to hold a section 24 investigation or, as the case may be, a section 26 investigation in respect of the activity⁷; and
- 449 (2) make that determination within the preliminary inquiry period⁸.

¹ The Legal Services Act 2007 Sch 6 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

³ I.e. a request under the Legal Services Act 2007 Sch 6 para 2 (see PARAS 525-526). The Board may where it receives a request under Sch 6 para 2 to which Sch 6 para 3 does not apply or in any other case where it considers it appropriate to do so, carry out such inquiries as it considers appropriate to enable it to determine whether it is appropriate to hold a section 24 investigation or a section 26 investigation in respect of an activity: Sch 6 para 4(1). In the case of a section 24 investigation, that activity must be a legal activity: Sch 6 para 4(2). As to the meaning of 'section 24 investigation' see PARA 525. As to the meaning of 'section 26 investigation' see PARA 526.

⁴ As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

⁵ As to the Consumer Panel see PARAS 323-326.

⁶ Legal Services Act 2007 Sch 6 para 3(1).

⁷ Legal Services Act 2007 Sch 6 para 3(2)(a).

⁸ Legal Services Act 2007 Sch 6 para 3(2)(b). 'Preliminary inquiry period' means the period of three months beginning with the day on which the request under Sch 6 para 2 was received by the Board: Sch 6 para 3(3). The Board may, before the end of the preliminary inquiry period in relation to a request, issue a notice extending that period by a period specified in the notice: Sch 6 para 3(4). More than one notice may be issued under Sch 6 para 3(4), but the total preliminary inquiry period must not exceed four months: Sch 6 para 3(5). The notice must state the Board's reasons for extending the preliminary inquiry period and must be published: Sch 6 para 3(6), (7). As to notices generally see PARA 303 note 11.

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/528. Advice.

528. Advice.

As from a day to be appointed the following provisions have effect¹. Before determining whether it is appropriate to hold a section 24 investigation or a section 26 investigation² in respect of an activity, the Legal Services Board³ may seek the advice of one or both of the Office of Fair Trading⁴ and the Consumer Panel⁵. The Office of Fair Trading or the Consumer Panel may, for the purposes of giving such advice, request any person to provide it with such information as may be specified by it⁶.

Before determining whether it is appropriate to hold a section 24 investigation or a section 26 investigation in respect of an activity the Board may also seek the advice of the Lord Chief Justice⁷.

In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of the making of such an order in respect of the activity in question⁸.

The Board must publish any advice given under the above provisions⁹.

1 The Legal Services Act 2007 Sch 6 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'section 24 investigation' see PARA 525. As to the meaning of 'section 26 investigation' see PARA 526.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. In deciding what advice to give the Consumer Panel must have regard to the likely impact which making that order or (as the case may be) provision would have on consumers: Legal Services Act 2007 Sch 6 para 5(3)(b). As to the meaning of 'consumers' see PARA 302 note 8.

5 Legal Services Act 2007 Sch 6 para 5(1). As to the Consumer Panel see PARAS 323-326. The Office of Fair Trading or the Consumer Panel must, if its advice is sought, give the Board such advice as it thinks fit, within such reasonable period as the Board may specify: Sch 6 para 5(2). In deciding what advice to give the Office of Fair Trading must, in particular, consider whether making an order under s 24 (see PARA 525) or (as the case may be) provision in accordance with a recommendation under s 26 (see PARA 526), in respect of the activity would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 6 para 5(3)(a). As to the meaning of 'reserved legal services' see PARA 512 note 2.

6 Legal Services Act 2007 Sch 6 para 5(4).

7 Legal Services Act 2007 Sch 6 para 6(1). If the Board has sought advice under Sch 6 para 5, the Board may not seek advice from the Lord Chief Justice until the period for giving advice under Sch 6 para 5 has ended and it has given the Lord Chief Justice a copy of any advice duly given under Sch 6 para 5: Sch 6 para 6(2). If advice is sought under Sch 6 para 6(1), the Lord Chief Justice must give the Board such advice as the Lord Chief Justice thinks fit, within such reasonable period as may be specified by the Board and may, for the purposes of giving that advice, request any person to provide the Lord Chief Justice with such information as may be specified by the Lord Chief Justice: Sch 6 para 6(3).

8 Legal Services Act 2007 Sch 6 para 6(4).

9 Legal Services Act 2007 Sch 6 para 7(1). Nothing in Sch 6 para 7 operates to prevent a person who give such advice from publishing it: Sch 6 para 7(2).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/529. Refusing to hold an investigation.

529. Refusing to hold an investigation.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may refuse a request to hold a full investigation³ only if the consultation requirements are satisfied⁴ and either the consent requirement⁵ is satisfied or the request was made by the Lord Chancellor⁶.

1 The Legal Services Act 2007 Sch 6 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Ie an investigation under the Legal Services Act 2007 Sch 6 para 2 (see PARAS 525-526) to which Sch 6 para 3 (see PARA 527) applies.

4 The consultation requirements are:

311 (1) that the Board has consulted the Office of Fair Trading, the Consumer Panel and the Lord Chief Justice under the Legal Services Act 2007 Sch 6 paras 5, 6 (see PARA 528) (Sch 6 para 8(3)(a)); and

312 (2) that the Board has obtained advice from the Office of Fair Trading and the Consumer Panel or the period within which that advice is required to be given has expired and the Board has obtained advice from the Lord Chief Justice or the period within which that advice is required to be given has expired (Sch 6 para 8(3)(b)).

5 The consent requirement is that the Board has given the Lord Chancellor a copy of any advice given under the Legal Services Act 2007 Sch 6 para 5 or 6 (see PARA 528) and the Lord Chancellor has consented to the Board's refusal of the request: Sch 6 para 8(4).

6 Legal Services Act 2007 Sch 6 para 8(1), (2).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/530. Decision to hold investigation.

530. Decision to hold investigation.

As from a day to be appointed the following provisions have effect¹. Where the Legal Services Board² has decided, following inquiries³, to hold a section 24 investigation or a section 26 investigation⁴ in respect of an activity the Board must, as soon as reasonably practicable, give notice⁵ of its decision to the Lord Chancellor, the Office of Fair Trading⁶, the Consumer Panel⁷ and the Lord Chief Justice⁸. The notice must state the Board's reason for its decision to hold the investigation and contain a description of the procedure⁹, including any time limits¹⁰.

1 The Legal Services Act 2007 Sch 6 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Ie inquiries under the Legal Services Act 2007 Sch 6 para 3 or 4 (see PARA 527).

4 As to the meaning of 'section 24 investigation' see PARA 525. As to the meaning of 'section 26 investigation' see PARA 526.

5 The Board must publish the notice: Legal Services Act 2007 Sch 6 para 9(2). As to notices generally see PARA 303 note 11.

6 As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq.

7 As to the Consumer Panel see PARAS 323-326.

8 Legal Services Act 2007 Sch 6 para 9(1), (2).

9 Ie the procedure set out in the Legal Services Act 2007 Sch 6 paras 10-17 (see PARAS 531-533).

10 Legal Services Act 2007 Sch 6 para 9(3).

UPDATE

516-530 Exempt persons ... Decision to hold investigation

These provisions have effect as from 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/531. Investigation.

531. Investigation.

As from a day to be appointed the following provisions have effect¹. Where the Legal Services Board² has given notice³ of:

- 450 (1) a decision to hold a section 24 investigation⁴; or
- 451 (2) a decision to hold a section 26 investigation⁵,

in respect of an activity⁶ the Board must within the investigation period⁷ carry out such investigations as it considers appropriate for the purposes of enabling it to produce a provisional report⁸ in respect of the activity and produce and publish such a report⁹.

1 The Legal Services Act 2007 Sch 6 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 The notice under the Legal Services Act 2007 Sch 6 para 9(2) (see PARA 530). As to notices generally see PARA 303 note 11.

4 Legal Services Act 2007 Sch 6 para 10(1)(a). As to the meaning of 'section 24 investigation' see PARA 525.

5 Legal Services Act 2007 Sch 6 para 10(1)(b). As to the meaning of 'section 26 investigation' see PARA 526.

6 Legal Services Act 2007 Sch 6 para 10(1).

7 'Investigation period' means the period of 12 months beginning with the day on which the notice was given under the Legal Services Act 2007 Sch 6 para 9(2) (see PARA 530): Sch 6 para 11(1). The Board may, before the end of the investigation period, issue a notice extending that period by a period specified in the notice: Sch 6 para 11(2). More than one notice may be issued but the total investigation period must not exceed 16 months: Sch 6 para 11(3). The Board may issue the notice only after it has consulted the Office of Fair Trading, the Consumer Panel and the Lord Chief Justice: Sch 6 para 11(4). The notice must state the Board's reasons for extending the investigation period: Sch 6 para 11(4). The Board must publish any notice so issued: Sch 6 para 11(6).

8 Legal Services Act 2007 Sch 6 para 10(2)(a). A provisional report is a report stating:

313 (1) in a case within head (1) in the text, whether or not the Board is minded to make a recommendation for the purposes of s 24 (recommendation that activity should become a reserved legal activity) (see PARA 512) (Sch 6 para 10(3)(a));

314 (2) in a case within head (2) in the text, whether or not the Board is minded to make a recommendation for the purposes of s 26 (recommendation that activity should cease to be a reserved legal activity) (see PARA 526) (Sch 6 para 10(3)(b)).

A provisional report must also state the Board's reasons for its being, or not being, minded to make the recommendation in question: Sch 6 para 10(4). The following applies for the purposes of investigations under Sch 6 para 10(2)(a): Sch 6 para 12(1). The Board may make rules governing the making of oral and written representations, and the giving of oral and written evidence, to the Board: Sch 6 para 12(2). Such rules may (among other things) include:

315 (a) provision about the time and place at which any oral evidence is to be given or oral representations are to be heard (Sch 6 para 12(3)(a));

- 316 (b) provision about the period within which any written evidence is to be given or written representations are to be made (Sch 6 para 12(3)(b)).

In relation to each investigation, the Board must determine if, and to what extent oral evidence or representations should be heard and written evidence or representations should be received: Sch 6 para 12(4). The Board must, so far as is reasonably practicable, consider any written or oral representations duly made: Sch 6 para 12(5). The Board may pay such costs of a person as the Board considers reasonable for the purpose of facilitating the giving of oral evidence or the making of oral representations, by or on behalf of that person, in accordance with rules made under Sch 6: Sch 6 para 18.

- 9 Legal Services Act 2007 Sch 6 para 10(2)(b).

UPDATE

531 Investigation

TEXT AND NOTES--Legal Services Act 2007 Sch 6 paras 10, 11, 12(4), (5) in force 1 January 2010: SI 2009/3250. Legal Services Act 2007 Sch 6 para 12(1)-(3) in force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/532. Consideration of the provisional report.

532. Consideration of the provisional report.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may make rules governing the making to the Board of oral and written representations in respect of provisional reports³. The Board must exercise this power to make provision:

- 452 (1) enabling written representations and, so far as is reasonably practicable, oral representations to be made by affected practitioners⁴; and
- 453 (2) enabling written or oral representations to be made by bodies which represent affected practitioners⁵.

The Board must, so far as reasonably practicable, consider any such written or oral representations made in accordance with rules to which heads (1) and (2) apply⁶ and any other representations made in accordance with rules governing the making of those representations⁷ and any written or oral evidence given in accordance with rules governing the giving of evidence⁸ which the Board considers relevant⁹.

¹ The Legal Services Act 2007 Sch 6 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

³ Legal Services Act 2007 Sch 6 para 13(1). Such rules may (among other things) include:

317 (1) provision about the time and place at which any oral representations are to be heard (Sch 6 para 13(2)(a));

318 (2) provision about the period within which any written representations are to be made (Sch 6 para 13(2)(b)).

⁴ Legal Services Act 2007 Sch 6 para 13(3)(a). An 'affected practitioner' is a person carrying on the activity in respect of which the investigation is being held: Sch 6 para 13(4).

⁵ Legal Services Act 2007 Sch 6 para 13(3)(b).

⁶ Legal Services Act 2007 Sch 6 para 15(a).

⁷ ie in accordance with rules under the Legal Services Act 2007 Sch 6 para 13(1).

⁸ ie in accordance with rules under the Legal Services Act 2007 Sch 6 para 14(2) (see PARA 533).

⁹ Legal Services Act 2007 Sch 6 para 15(b).

UPDATE

532 Consideration of the provisional report

TEXT AND NOTES--Legal Services Act 2007 Sch 6 para 13 in force 1 January 2009: SI 2008/3149. Legal Services Act 2007 Sch 6 para 15 in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(3) RESERVED LEGAL ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007/(v) Alteration of Reserved Legal Activities/533. Final report.

533. Final report.

As from a day to be appointed the following provisions have effect¹. After considering representations in respect of the provisional report², the Legal Services Board³ must decide whether not to make the appropriate recommendation⁴ and prepare a report ('final report') setting out its decision and the reasons for it⁵. The Board must give a copy of the final report to the Lord Chancellor and publish that report⁶. The Board must comply with the obligations imposed in preparing the final report⁷ within the final reporting period⁸.

1 The Legal Services Act 2007 Sch 6 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie after complying with the Legal Services Act 2007 Sch 6 para 15 (see PARA 532).

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 Ie the Board must decide:

319 (1) in the case of a section 24 investigation, whether or not to make a recommendation for the purposes of the Legal Services Act 2007 s 24 (see PARA 525) (Sch 6 para 16(1)(a)); and

320 (2) in the case of a section 26 investigation whether or not to make a recommendation for the purposes of s 26 (see PARA 526) (Sch 6 para 16(1)(b)).

As to the meaning of 'section 24 investigation' see PARA 525. As to the meaning of 'section 26 investigation' see PARA 526. For the purpose of making a decision under Sch 6 para 16(1)(a) or (b), the Board must, after publication of a provisional report, determine if and to what extent further evidence should be heard or received: Sch 6 para 14(1). The Board may make rules governing the giving of such evidence which may (among other things) include provision about the time and place at which any oral evidence is to be given, and provision about the period within which any written evidence is to be given: Sch 6 para 14(2), (3).

5 Legal Services Act 2007 Sch 6 para 16(1), (2)(a). The report must also set out:

321 (1) where the Board decides to make a recommendation for the purposes of s 24 or s 26, that recommendation (Sch 6 para 16(2)(b)); and

322 (2) where it decides to make a recommendation for the purposes of s 24, a statement of the provisions which, in the Board's opinion, will need to be made by virtue of s 204(3) (Sch 6 para 16(2)(c)).

6 Legal Services Act 2007 Sch 6 para 16(3).

7 Ie the obligations imposed by the Legal Services Act 2007 Sch 6 para 16.

8 Legal Services Act 2007 Sch 6 para 16(4). 'Final reporting period' means the period of three months beginning with the date on which the provisional report was published under Sch 6 para 10(2) (see PARA 531): Sch 6 para 17(1). The Board may, before the end of the final reporting period, issue a notice extending that period by a period specified in the notice and more than one notice may be issued but the total final reporting period must not exceed five months: Sch 6 para 17(2), (3). The Board may issue the notice only after it has consulted the Office of Fair Trading, the Consumer Panel and the Lord Chief Justice: Sch 6 para 17(4). The notice must state the Board's reasons for extending the final reporting period: Sch 6 para 17(5). The Board must publish the notice issued: Sch 6 para 17(6). As to notices generally see PARA 303 note 11.

UPDATE

533 Final report

TEXT AND NOTES--Legal Services Act 2007 Sch 6 para 14 in force 1 January 2009: SI 2008/3149. Legal Services Act 2007 Sch 6 para 15 in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(i) Introduction/534. Introduction.

(4) EUROPEAN LAWYERS

(i) Introduction

534. Introduction.

The Treaty Establishing the European Community (the 'EC Treaty') prohibits, within the parameters of a specified framework, restrictions on the freedom of establishment of nationals of member states in the territory of other member states¹ and on the freedom to provide services within the member states of the European Union².

Each member state is required to recognise as a lawyer for the purpose of the provision of services in its territory any person qualified as a lawyer in another member state, including a person qualified in the United Kingdom to practise as a barrister or a solicitor³; and all lawyers are entitled to pursue their professional activities on a permanent basis in any other member state under their home-country professional title⁴. A lawyer pursuing such activities must observe the rules of professional conduct of the host state without prejudice to his obligations in his home state⁵. Depending on circumstances, a host member state may require a lawyer qualified in another member state to be introduced to the presiding judge and, where appropriate, to the president of the local Bar, and to work in conjunction with a lawyer who practises before the judicial authority in question and who would, where necessary, be answerable to that authority⁶.

1 See the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) arts 43-48 (formerly arts 52-58; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ). These articles are concerned with the freedom of establishment of nationals of one member state in the territory of another member state. Article 43 includes the right to pursue self-employed occupations; and art 47 provides for the issue of directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications. See further EC Parliament and Council Directive 2005/36 (OJ L255, 30.09.05, p 22) on the recognition of professional qualifications; and the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781. It has been held that EC Treaty art 43 (as renumbered) is directly applicable and that freedom of establishment prevents a member state from denying, on the basis of the national legislation and the rules of professional conduct which are in force in that state, to a national of another member state the right to enter and exercise the legal profession solely on the ground that he is a foreign national, or that he maintains chambers simultaneously in another member state: see Case 2/74 *Reyners v Belgian State* [1974] ECR 631, [1974] 2 CMLR 305, ECJ; Case 107/83 *Ordre des Avocats au Barreau de Paris v Klopp* [1984] ECR 2971, [1985] 1 CMLR 99. See also Case 71/76 *Thieffry v Conseil de l'Ordre des Avocats à la cour de Paris* [1977] ECR 765, [1977] 2 CMLR 373. Provided, however, that it avoids discrimination against nationals of other member states, each member state is free, in the absence of specific rules in the matter, to regulate the exercise of the legal profession in its territory; thus a member state whose legislation requires lawyers wishing to establish themselves in its territory to be registered at a Bar may impose the same requirement on lawyers from other member states who rely on the right of establishment provided by the EC Treaty to establish themselves there: Case 292/86 *Gullung v Conseil des Ordres des Avocats des Barreaux de Colmar et de Saverne* [1990] 1 QB 234, [1988] ECR 111, ECJ.

2 See the EC Treaty arts 49-55 (formerly arts 59-66; renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ). These articles are concerned with the freedom to provide services within the member states. Article 50 includes activities of the professions in the provision of services.

3 EC Council Directive 77/249 (OJ L078, 26.3.77, p 17) to facilitate the effective exercise by lawyers of freedom to provide services, arts 1, 2; implemented in the United Kingdom by the European Communities (Services of Lawyers) Order 1978, SI 1978/1910 (see PARA 536 et seq). Activities relating to the representation of a client in legal proceedings or before public authorities are to be pursued in each host member state under

the conditions established for lawyers established in that state, with the exception of any conditions requiring residence or registration with a professional organisation in the host state: EC Council Directive 77/249 (OJ L078, 26.3.77, p 17) art 4(1); and see also Case 33/74 *Van Binsbergen v Bestuur van de Bedrijfsvereniging voor de Metaalnijverheid* [1974] ECR 1299, [1975] 1 CMLR 298, ECJ. As to the meaning of 'United Kingdom' see PARA 1063 note 13.

EC Council Directive 77/249 (OJ L078, 26.3.77, p 17) cannot be relied upon by a lawyer established in one member state who wishes to provide services in another member state where he has been prohibited access to the legal profession for reasons relating to dignity, integrity and probity: Case 292/86 *Gullung v Conseil des Ordres des Avocats des Barreaux de Colmar et de Saverne* [1990] 1 QB 234, [1988] ECR 111, ECJ.

4 EC Council Directive 98/5 (OJ L077, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained and implemented in the United Kingdom by the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119 (see PARA 541 et seq). A lawyer wishing to practise in a member state other than that in which he obtained his professional qualification must register with the competent authority in that state: see EC Council Directive 98/5 (OJ L077, 14.3.98, p 36) art 3 implemented by the European Lawyers Registration Regulations 2000 (see PARA 627).

5 EC Council Directive 77/249 (OJ L078, 26.3.77, p 17) art 4(2); EC Council Directive 98/5 (OJ L077, 14.3.98, p 36) art 6(1). A lawyer pursuing activities other than those relating to the representation of a client in legal proceedings remains subject to the rules of professional conduct of the state from which he comes, and must also adhere to the rules which govern the profession in the host state to the extent that such rules are capable of being observed by a lawyer who is not established in the host state and to the extent to which their observance is objectively justified: see EC Council Directive 77/249 (OJ L078, 26.3.77, p 17) art 4(4).

6 EC Council Directive 77/249 (OJ L078, 26.3.77, p 17) art 5; EC Council Directive 98/5 (OJ L077, 14.3.98, p 36) art 5(3). As to the extent to which a registered European lawyer may practise see PARA 678.

UPDATE

534 Introduction

NOTE 1--SI 2007/2781 amended: SI 2008/2683, SI 2009/1587, SI 2009/1885.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(i) Introduction/535. Meaning of 'European lawyer'.

535. Meaning of 'European lawyer'.

A European lawyer is a person who is a national of the United Kingdom¹ or another specified state and who is authorised in any of those states to pursue professional activities under a specified professional title². The states (in addition to the United Kingdom) specified for these purposes are Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, the Republic of Ireland, Romania, Slovakia, Slovenia, Spain, Sweden, and Switzerland³. Solicitors and barristers of England and Wales or Northern Ireland, and solicitors and advocates under the law of Scotland, are not European lawyers for these purposes⁴.

1 As to the meaning of 'United Kingdom' see PARA 1063 note 13. As to United Kingdom nationality see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 7.

2 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 2 (amended by SI 2004/1117); European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(1), (2)(a), (b); Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the Consolidated Regulations see PARA 1060. As to the Code of Conduct see PARA 1150.

3 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 2 (amended by SI 2004/1117, SI 2007/359); European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(4) (amended by SI 2004/1628, SI 2008/81). For the titles attaching to persons who are authorised to pursue professional activities in these states for these purposes see European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 2 (amended by SI 2004/1117 and the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(4) (as so amended)).

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(2)(c); Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. Where, however, a person is a European lawyer registered with more than one of the solicitors' professional bodies or the barristers' professional bodies or the Law Society of Scotland or the Faculty of Advocate and subsequently acquires the title used by members of one of those bodies, then for these purposes he continues to fall within the definition of a 'European lawyer' in relation to that other professional body for the period that he remains registered with that other professional body: European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(2)(c), (3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(ii) European Communities (Services of Lawyers) Order 1978/536. Generally.

(ii) European Communities (Services of Lawyers) Order 1978

536. Generally.

The European Communities (Services of Lawyers) Order 1978¹ has effect for the purpose of enabling a European Lawyer² to pursue his professional activities in any part of the United Kingdom by providing, under the conditions specified in or permitted by the EC Council Directive to facilitate the effective exercise by lawyers of the freedom to provide services³, services otherwise reserved to barristers and solicitors⁴.

1 Ie the European Communities (Services of Lawyers) Order 1978, SI 1978/1910.

2 As to the meaning of 'European lawyer' see PARA 535.

3 Ie EC Council Directive 77/249 (OJ L078, 26.3.77, p 17).

4 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 4 (amended by SI 2004/1117). 'Barrister' and 'solicitor' mean, in relation to any part of the United Kingdom, a person practising in that part as a barrister or solicitor as the case may be: art 2. As to the provision of services by a European lawyer by way of legal advice and assistance or legal aid see the European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 10; and **LEGAL AID** vol 65 (2008) PARA 10.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(ii) European Communities (Services of Lawyers) Order 1978/537. Representation in legal proceedings.

537. Representation in legal proceedings.

No enactment or rule of law or practice must prevent a European lawyer¹ from providing any service in relation to any proceedings, whether civil or criminal, before any court, tribunal or public authority (including appearing before and addressing the court, tribunal or public authority) by reason only that he is not a barrister or solicitor²; provided that throughout he is instructed with, and acts in conjunction with, a barrister or solicitor who is entitled to practise before the court, tribunal or public authority concerned and who could properly provide the service in question³.

Nothing in the European Communities (Services of Lawyers) Order 1978⁴ enables a European Lawyer, if he is instructed and acts in conjunction with a barrister in any proceedings, to provide in the course of those proceedings, or of any related proceedings, any service which a barrister could not properly provide⁵. Likewise nothing in the order enables a European Lawyer, if he is instructed with and acts in conjunction with a solicitor in any proceedings, to provide in the course of the those proceedings, or of any related proceedings, any service which a solicitor could not properly provide⁶.

1 As to the meaning of 'European lawyer' see PARA 535.

2 As to the meaning of 'barrister' and 'solicitor' see PARA 536 note 4.

3 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 5 (amended by SI 2004/1117). A European lawyer is an exempt person for the purposes of the Legal Services Act 2007: see Sch 3 para 7; and PARA 523.

4 Ie the European Communities (Services of Lawyers) Order 1978, SI 1978/1910.

5 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 6(b) (amended by SI 2004/1117). A European lawyer in salaried employment who is instructed with and acts in conjunction with a barrister in any proceedings may provide a service on behalf of his employer in those proceedings only in so far as a barrister in such employment could properly do so: European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 7 (amended by SI 2004/1117).

6 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 6(c) (amended by SI 2004/1117).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(ii) European Communities (Services of Lawyers) Order 1978/538. Drawing of documents etc not related to legal proceedings.

538. Drawing of documents etc not related to legal proceedings.

No enactment or rule of law must prevent a European lawyer¹ from drawing or preparing for remuneration in England or Wales an instrument relating to personal estate by reason only that he is not a barrister or solicitor². Nothing in the European Communities (Services of Lawyers) Order 1978³ entitles a European lawyer to draw or prepare for remuneration any instrument creating or transferring an interest in land or for obtaining title to administer the estate of a deceased person⁴.

1 As to the meaning of 'European lawyer' see PARA 535.

2 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 8 (amended by SI 2004/1117). As to the meaning of 'barrister' and 'solicitor' see PARA 536 note 4. A European lawyer is an exempt person for the purposes of the Legal Services Act 2007: see Sch 3 para 7; and PARA 523.

3 Ie the European Communities (Services of Lawyers) Order 1978, SI 1978/1910.

4 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 9 (amended by SI 2004/1117).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(ii) European Communities (Services of Lawyers) Order 1978/539. Title, description and verification of status.

539. Title, description and verification of status.

In providing any services, a European lawyer¹ must use the professional title and description applicable to him in his country of origin, expressed in the language or one of the languages of that country, together with the name of the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that country².

A competent authority³ may at any time request a person seeking to provide any services to verify his status as a European lawyer⁴. Where such a request has been made, the person to whom it is made must not, except to the extent (if any) allowed by the competent authority making the request, be entitled to provide services in the United Kingdom until he has verified his status as a European lawyer to the satisfaction of that authority⁵.

1 As to the meaning of 'European lawyer' see PARA 535.

2 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 11 (amended by SI 2004/1117).

3 For these purposes a competent authority in relation to England and Wales is:

323 (1) where the services which the person concerned seeks to provide are reserved to barristers, the Bar Standards Board (European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 14(a)); or

324 (2) where head (1) does not apply, the Solicitors Regulation Authority (art 14(b)); or

325 (3) in any case, any court, tribunal or public authority before which the person concerned seeks to provide services (art 14(c)).

4 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 12 (amended by SI 2004/1117).

5 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 13.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(ii) European Communities (Services of Lawyers) Order 1978/540. Professional misconduct.

540. Professional misconduct.

A complaint may be made to a disciplinary authority that a European lawyer¹ providing any services has failed to observe a condition or rule of professional conduct referred to in the relevant Council Directive² and applicable to him³.

Where such a complaint is made, the disciplinary authority⁴ concerned must consider and adjudicate upon it in accordance with the same procedure, and subject to the same rights of appeal, as apply in relation to a barrister or solicitor⁵ (as the case may be) over whom that authority has jurisdiction⁶.

Where a disciplinary authority finds that a European lawyer against whom such a complaint has been made has committed a breach of a condition or a rule of professional conduct mentioned in that article, that authority:

454 (1) must report that finding to the European lawyer's own professional authority⁷; and

455 (2) may, if it thinks fit, direct him not to provide services in the United Kingdom, except to such extent and under such conditions (if any) as the disciplinary authority may specify in the direction⁸.

1 As to the meaning of 'European lawyer' see PARA 535.

2 Ie EC Council Directive 77/249 (OJ L078, 26.3.77, p 17) art 4 (see PARA 534).

3 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 15(1) (amended by SI 2004/1117).

4 A disciplinary authority in relation to England is:

326 (1) where the services in question are reserved to barristers an authority having disciplinary jurisdiction over barristers (European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 15(3)(a));

327 (2) where head (1) does not apply, an authority having disciplinary jurisdiction over solicitors in the part of the United Kingdom concerned (art 15(3)(b)).

5 As to the meaning of 'barrister' and 'solicitor' see PARA 536 note 4.

6 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 15(2) (amended by SI 2004/1117).

7 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 16(1)(a) (amended by SI 2004/1117).

8 European Communities (Services of Lawyers) Order 1978, SI 1978/1910, art 16(1)(b). A disciplinary authority may at any time, if it thinks fit, vary, cancel or suspend the operation of a direction given by it under art 16(1)(b): art 16(2). A European lawyer in respect of whom a direction is made under art 16(1)(b) must not be entitled to provide services in the United Kingdom except as allowed by the direction: art 17.

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(iii) European Communities (Lawyer's Practice) Regulations 2000

541. Generally.

The European Communities (Lawyer's Practice) Regulations 2000¹ have effect for the purpose of facilitating the practice of the profession of lawyer on a permanent basis by a European lawyer² in England and Wales³.

1 I.e. the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119.

2 As to the meaning of 'European lawyer' see PARA 535.

3 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 3(2). The provisions of the European Communities (Lawyer's Practice) Regulations 2000 must not affect the provision of services by lawyers within the meaning of the European Communities (Services of Lawyers) Order 1978, SI 1978/1910 (see art 2).

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542. Registration.

Each professional body¹ must establish and maintain a register of registered European lawyers². Subject to certain restrictions³, a European lawyer who wishes to pursue professional activities under his home professional title⁴ on a permanent basis in England and Wales must apply to be entered on the register maintained by a professional body⁵ and a professional body must enter on its register the name of a European lawyer who makes such an application⁶.

A European lawyer who wishes to register with a professional body must provide the professional body with a certificate confirming his registration with the competent authority in each home state under whose home professional title he intends to practise⁷.

An application for registration must comply with any applicable regulations made by the relevant professional body and be accompanied by the appropriate fee⁸.

A European lawyer must not be registered at the same time both with one of the solicitors' professional bodies and with one of the barristers' professional bodies⁹.

1 'Professional body' means, subject to the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16, any of the solicitors' professional bodies or the barristers' professional bodies: reg 2(1).

2 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 15. Subject to reg 18, a European lawyer may apply to be entered on the registers maintained by more than one professional body: reg 16(5). Where a professional body publishes the names of solicitors or barristers registered with it, it must also publish the names of any European lawyers registered with it: reg 24(1). For this purpose 'publishes' or 'publish' includes the provision of information to a legal publisher: reg 24(2). As to the register see PARAS 627, 1102 et seq. As to the meaning of 'European lawyer' see PARA 535. 'Registered European lawyer' means a European lawyer who is registered with a professional body in accordance with reg 17 and whose registration has not been withdrawn or suspended (reg 2(1)) and a person who is registered with the Solicitors Regulation Authority under reg 17 is a 'registered European lawyer' for the purposes of the Administration of Justice Act 1985 s 9 (see s 9(8) (added by SI 2000/1119)), the Solicitors' Code of Conduct 2007 (see r 24.01), the Solicitors' Accounts Rules 1998 (see r 2(2)(ta)) and the Solicitors' Indemnity Insurance Rules 2008 (see r 3.1). References in the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, to registered European lawyers are references to lawyers whose names are entered in the register of registered European lawyers maintained by the Solicitors Regulation Authority under the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 15 and include, where appropriate, those who have ceased to be registered in that register or whose registration has been suspended: Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 2(4).

3 See subject to the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 18.

4 As to the meaning of 'home professional title' see PARA 545 note 2.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(1). A professional body must consider an application for registration under reg 16 as soon as is reasonably practicable, and must notify the European lawyer of its decision, and if the application is rejected or granted subject to conditions, the reasons upon which the rejection or the imposition of conditions is based, within four months of receipt of an application complying with reg 16(2), (4): reg 19(1). Where the professional body fails to take a decision and notify the European lawyer within four months in accordance with reg 19(1), it must be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period: reg 19(2). Where a professional body withdraws or suspends a registration, it must notify the European lawyer of its decision and of the reasons upon which the withdrawal or suspension is based: reg 19(3). Within three months of the notification to him of the professional body's decision, or later with the permission of the appeal body, the European lawyer may appeal against the decision to the Master of the Rolls if he is a solicitor and to the Visitors to the Inns of Court if he is a barrister: reg 20(1), Sch 1. An appeal body may, for the purpose of determining the appeal order the professional body to register the European lawyer, refuse the appeal or remit the matter to

the professional body with such directions as the appeal body sees fit: reg 20(2). The appeal body must give reasons for its decision: reg 20(3).

6 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 17(1). Where a professional body registers a European lawyer in accordance with reg 17(1) it must inform the competent authority in the home state of the registration: reg 17(2). Any certificate purporting to be signed by an officer of a professional body and stating that a person is, or is not, registered with that professional body or was, or was not, registered with that professional body during a period specified in the certificate, must, unless the contrary is proved, be evidence of that fact and be taken to have been so signed: reg 23.

7 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(2). A professional body may require that the certificate referred to in reg 16(2) must not have been issued more than three months before the date of the application under reg 16: reg 16(3). As to the meaning of 'home state' see PARA 545 note 2.

8 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(4).

9 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 18(1).

UPDATE

542 Registration

NOTE 5--A European lawyer may now appeal against the professional body's decision to the High Court if he is a solicitor: SI 2000/1119 reg 20(1), Sch 1 (Sch 1 amended by SI 2009/1587).

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543. Competent authorities.

The Solicitors Regulation Authority¹, and the Bar Standards Board² are designated competent authorities for the purposes of:

- 456 (1) receiving applications for registration by European lawyers³ under the relevant regulations⁴;
- 457 (2) receiving applications from registered European lawyers for entry into the profession of solicitor or barrister⁵;
- 458 (3) the regulation of registered European lawyers registered with them⁶; and
- 459 (4) the provision of certificates attesting to the registration of solicitors or barristers registered with them⁷.

1 The European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, refer to the Law Society. However in practice the body responsible for registered European lawyers is the Solicitors Regulation Authority: see PARA 619 et seq. The Solicitors' Code of Conduct 2007 applies to lawyers registered with the Solicitors' Regulation Authority under the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119 (see PARA 546): see the Solicitors' Code of Conduct 2007 r 23.01. As to the register see PARA 628. As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq. As to the ways in which a European lawyer registered with the Authority may practise see PARA 678.

2 The European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, refer to the Inns of Court and the General Council of the Bar. However in practice the body responsible for registered European lawyers is the Bar Standards Board: see PARA 1049. As to European lawyers registered with the Bar Standards Board see PARA 535 et seq.

3 As to the meaning of 'European lawyer' see PARA 535.

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 4(a). The relevant regulations mentioned in the text are the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, Pt III (regs 15-24) (see PARAS 542-549).

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 4(b). As to the meaning of 'registered European lawyer' see PARA 542 note 2.

6 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 4(c).

7 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 4(d).

UPDATE

543 Competent authorities

NOTE 1--Solicitors' Code of Conduct 2007 r 23.01 amended on 31 March 2009.

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544. Exchange of information.

In order to facilitate the application of the appropriate EC Council Directive¹ and to prevent its provisions from being misapplied, a professional body² may supply to or receive from another professional body or an authority in any of the relevant states³ which has been designated by that state under the Directive as a competent authority in that state, any information relating to a European lawyer⁴ or to any person with whom he jointly practises⁵.

Subject to the above provisions⁶, a professional body must preserve the confidentiality of any information received in accordance with those provisions relating to a European lawyer or to any person with whom he jointly practises⁷.

A competent authority in England and Wales must provide a certificate attesting to the registration of a solicitor or barrister⁸ registered with it and his authorisation to practise when requested to do so by that solicitor or barrister or by a competent authority in a relevant state⁹.

1 Ie EC Council Directive 98/5 (OJ L077, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained (see PARA 534).

2 As to the meaning of 'professional body' see PARA 542 note 1.

3 Ie the states listed in the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(4) (see PARA 535).

4 As to the meaning of 'European lawyer' see PARA 535.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 5(1).

6 Ie subject to the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 5(1).

7 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 5(2).

8 'Barrister' means, in relation to England and Wales, a person who is a barrister of England and Wales, as the case may be: European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(1). As to barristers generally see PARA 1033 et seq. 'Solicitor' means, in relation to England and Wales, a person who is a solicitor of England and Wales, as the case may be: reg 2(1). As to solicitors generally see PARA 600 et seq.

9 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 5(3). A relevant state mentioned in the text refers to a state listed in reg 2(4) (see PARA 535).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(4) EUROPEAN LAWYERS/(iii) European Communities (Lawyer's Practice) Regulations 2000/545. Practice of professional activities.

545. Practice of professional activities.

A registered European lawyer¹ is entitled to carry out under his home professional title² any professional activity that may lawfully be carried out by a member of the professional body³ with which he is registered and any enactment or rule of law or practice with regard to the carrying out of professional activities by members of that professional body is to be interpreted and applied accordingly⁴.

A registered European lawyer who is in salaried employment may carry out professional activities under his home professional title to the same extent that an employed member of the professional body with which he is registered may do so⁵.

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 'Home professional title' means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home state in the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(4) (see PARA 535) under which he is authorised in his home state to pursue professional activities: reg 2(1). 'Home state' means the state in reg 2(4) in which a European lawyer acquired his authorisation to pursue professional activities and, if he is authorised in more than one of those states, it means any of those states: reg 2(1).

3 As to the meaning of 'professional body' see PARA 542 note 1.

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 6(1). A registered European lawyer is not entitled, by virtue of reg 6(1), to prepare for remuneration any instrument creating or transferring an interest in land unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland, Sweden, Iceland, Liechtenstein, Norway, the Czech Republic, Cyprus, Hungary or Slovakia: reg 12 (amended by SI 2004/1628). A registered European lawyer is not entitled, by virtue of the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 6(1), to prepare for remuneration any instrument for obtaining title to administer the estate of a deceased person unless he has a home professional title obtained in Denmark, Germany, the Republic of Ireland, Austria, Finland, Sweden, Iceland, Liechtenstein, Norway, Cyprus or Slovakia: reg 13 (amended by SI 2004/1628). As to legal aid in respect of a European lawyer see the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 14.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 6(2).

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546. Title and description to be used by a registered European lawyer.

Where a registered European lawyer¹ is engaged in any professional activity authorised by the professional organisation in his home state which gave him the authorisation to practise or any professional activity that may be carried out by a member of the professional body² with which he is registered, he must comply with certain requirements³.

Those requirements are that a registered European lawyer must:

- 460 (1) use his home professional title expressed in an official language of his home state in a manner which avoids confusion with the title of solicitor or barrister⁴;
- 461 (2) indicate the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that state⁵; and
- 462 (3) indicate the professional body with which he is registered in the United Kingdom⁶.

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 As to the meaning of 'professional body' see PARA 542 note 1. As to the meaning of 'home state' see PARA 545 note 2.

3 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 7(1).

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 7(2)(a). As to the meanings of 'solicitor' and 'barrister' see PARA 544 note 8.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 7(2)(b).

6 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 7(2)(c).

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547. Joint practice.

A registered European lawyer¹ may carry out professional activities under his home professional title as part of a joint practice²:

- 463 (1) to the same extent and in the same manner as a member of the professional body³ with which he is registered may do so, with a member of the professional body with which he is registered, a registered European lawyer who is registered with the same professional body or any other person permitted by the professional body with which he is registered⁴; or
- 464 (2) with another European lawyer who is practising on a permanent basis under his home professional title in that registered European lawyer's home state⁵.

Where a registered European lawyer is a member of a joint practice in his home state, he may use the name of that practice with his home professional title when practising as a registered European lawyer⁶. However rules of conduct of the professional body with which a registered European lawyer is registered may prohibit the use by him of the name of a joint practice to the extent that that name is also used by persons who are not European lawyers or solicitors of any part of the United Kingdom and those rules prohibit members of that professional body from using that name⁷.

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 As to the meaning of 'home professional title' see PARA 545 note 2. Where a European lawyer is a member of a joint practice in his home state, he must inform the professional body with which he intends to register and provide it with the following information: (1) the name of the joint practice; (2) his place of business; (3) the name and place of business of any member of his joint practice; (4) any other information about the joint practice requested by the professional body: European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 10(1). A European lawyer must notify that professional body of any changes in the information whether before or after registration: reg 10(2).

3 As to the meaning of 'professional body' see PARA 542 note 1.

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 8(a).

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 8(b).

6 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 9(1). This is subject to reg 9(2). As to the meaning of 'home state' see PARA 545 note 2.

7 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 9(2).

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548. Representation in legal proceedings.

No enactment or rule of law or practice must prevent a registered European lawyer¹ from pursuing professional activities relating to the representation of a client in any proceedings before any court, tribunal or public authority (including addressing the court, tribunal or public authority) only because he is not a solicitor or barrister².

In such proceedings where the professional activities in question may³ be lawfully provided only by a solicitor, barrister or other qualified person, a registered European lawyer must act in conjunction with a solicitor or barrister who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully provide those professional activities⁴.

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 11(1). This is subject to reg 11(2). As to the meaning of 'solicitor' and 'barrister' see PARA 544 note 8.

3 But for the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 11.

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 11(2). The solicitor or barrister referred to in reg 11(2) must, where necessary, be answerable to the court, tribunal or public authority concerned: reg 11(3).

UPDATE

548 Representation in legal proceedings

TEXT AND NOTE 4--SI 2000/1119 reg 11(2) does not apply to professional activities relating to the representation of a client in proceedings before the Asylum and Immigration Tribunal or the Asylum Support Tribunal, or any tribunal hearing an appeal from those tribunals: SI 2000/1119 reg 11(4) (added by SI 2009/1587).

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549. Costs and fees of an unregistered European lawyer.

Where a European lawyer¹ is carrying on professional activities under his home professional title² in England and Wales but is not registered as a European lawyer in any part of the United Kingdom (including a person whose registration has been suspended), any costs or fees in respect of those activities are not recoverable by him or any other person³.

1 As to the meaning of 'European lawyer' see PARA 535.

2 As to the meaning of 'home professional title' see PARA 545 note 2.

3 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 22.

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550. Professional conduct.

Where a registered European lawyer¹ is practising under his home professional title² in the United Kingdom, he is subject to the same rules of professional conduct as a member of the professional body with which he is registered, and if he is registered with more than one, he is subject to the rules of professional conduct of all the professional bodies with which he is registered³.

Where a registered European lawyer fails to comply with those rules, he is subject to the same rules of procedure, penalties and remedies as a member of the professional body with which the European lawyer is registered and, if appropriate, is subject to disciplinary proceedings brought by an appropriate authority⁴. Any sanction against a registered European lawyer in relation to disciplinary proceedings may include withdrawal or suspension of his registration⁵. The appropriate authority must give reasons for its decision⁶.

Where a professional body intends to begin disciplinary proceedings against a registered European lawyer, it must inform the competent authority in his home state⁷ of the intention to begin those proceedings and furnish it with all the relevant details, co-operate with that authority throughout those proceedings and inform that authority of the decision reached in those proceedings, including the decision in any appeal, as soon as practicable after the decision is given⁸.

Where the competent authority in the registered European lawyer's home state withdraws his authorisation to practise under the home professional title either temporarily or permanently, his registration with the professional body must be automatically withdrawn to the same extent⁹.

Where there is an appeal against a decision in disciplinary proceedings against a registered European lawyer, the body responsible for hearing the appeal must afford the competent authority in the registered European lawyer's home state an opportunity to make representations in relation to that appeal¹⁰.

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 As to the meaning of 'home professional title' see PARA 545 note 2.

3 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 25. As to the meaning of 'professional body' see PARA 542 note 1.

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 26(1). For the purpose of reg 26(4) 'appropriate authority' means:

328 (1) where the registered European lawyer is registered with one of the solicitors' professional bodies, an authority having disciplinary jurisdiction over solicitors in England and Wales (reg 26(4)(a));

329 (2) where the registered European lawyer is registered with one of the barristers' professional bodies, an authority having disciplinary jurisdiction over barristers in England and Wales (reg 26(4)(b));

- 330 (3) where the registered European lawyer is registered with more than one of the solicitors' professional bodies or the barristers' professional bodies, an authority having disciplinary jurisdiction over solicitors or barristers, as the case may be, in England and Wales (reg 26(4)(c)).

As to the meaning of 'solicitor' and 'barrister' see PARA 544 note 8.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 26(2).

6 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 26(3).

7 As to the meaning of 'home state' see PARA 545 note 2.

8 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 27(1). Where a professional body intends to begin disciplinary proceedings against a solicitor or barrister practising in a state listed in reg 2(4), it must inform the competent authority in that state of the intention to begin those proceedings and furnish it with all the relevant details and the decision reached in those proceedings, including the decision in any appeal, as soon as practicable after the decision is given: reg 28.

9 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 27(2). However, where a registered European lawyer is authorised to practise under a home professional title in two or more home states, his registration must be withdrawn in accordance with reg 27(2) only if his authorisation to practise under a home professional title has been withdrawn in all those home states: reg 27(3).

10 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 27(4).

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551. Entry into profession of solicitor or barrister.

Where a registered European lawyer¹ applies to the professional body² where he has been registered to become a solicitor or barrister³, as the case may be, and that professional body requires him to pass an aptitude test⁴, he may apply to the professional body for an exemption from that requirement on one of the following grounds⁵.

- 465 (1) he is a European lawyer and has been registered with that professional body for at least three years and he has for a period of at least three years effectively and regularly pursued in England and Wales professional activities under his home professional title⁶ in the law of England and Wales⁷;
- 466 (2) he is a European lawyer and has been registered with that professional body for at least three years and he has for a period of at least three years effectively and regularly pursued in England and Wales professional activities under his home professional title and he has for a period of less than three years effectively and regularly pursued in England and Wales, professional activities under his home professional title in the law of England and Wales⁸.

The professional body must grant an exemption applied for under the above provisions if it considers that the necessary requirements⁹ have been met¹⁰. However the professional body may refuse to grant an exemption if it considers that the registered European lawyer would be unfit to practise as a solicitor or barrister¹¹. The registration of a registered European lawyer ceases from the date he is granted entry into the profession of solicitor or barrister¹².

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 As to the meaning of 'professional body' see PARA 542 note 1.

3 As to the meanings of 'solicitor' and 'barrister' see PARA 544 note 8.

4 I.e. an aptitude test under the Qualification Regulations reg 6(1)(b)(ii). The qualification regulations are defined by the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, as the European Communities (Recognition of Professional Qualifications) Regulations 1991, SI 1991/824. However these regulations have been revoked and replaced by the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005, SI 2005/18; which have themselves been revoked and replaced by the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 29(1).

6 As to the meaning of 'home professional title' see PARA 545 note 2. For the purposes of the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, regs 29-32 activities must be regarded as effectively and regularly pursued if they are actually exercised without any interruption other than those resulting from the events of everyday life: reg 33.

7 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 29(2). Where a registered European lawyer makes an application under reg 29(2) he must provide the professional body with any relevant information and documents which it may reasonably require: reg 31(1). The professional body may verify the effective and regular nature of the professional activity pursued and may, if necessary, request the registered European lawyer to provide, orally or in writing, clarification of, or further details on, the information and documents referred to in reg 31(1): reg 31(2).

8 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 29(3). Where a registered European lawyer makes an application under reg 29(3) he must provide the professional body with any relevant information and documents it may reasonably require: reg 32(1). When deciding whether to grant an application under reg 19(3), the professional body must take into account the professional activities the registered European lawyer has pursued during the period he has been registered and any knowledge and professional experience he has gained of, and any training he has received in, the law of any part of the United Kingdom and the rules of professional conduct of the profession concerned: reg 32(2). Subject to reg 32(4), in the case of an application under reg 29(3), the professional body must assess and verify the registered European lawyer's effective and regular professional activity and his capacity to continue the activity he has pursued at an interview: reg 32(3). Where a professional body believes that an interview is unnecessary and intends to grant an application under reg 29(3), it may dispense with that requirement: reg 32(4).

9 le the requirements under the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 29(2), (3).

10 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 30(1). A professional body must consider an application under reg 29 as soon as is reasonably practicable, and must notify the applicant of its decision and, if the application is rejected, the reasons for the rejection, within four months of receipt of all the relevant documents: reg 34(1). Where the professional body fails to take a decision and notify the registered European lawyer within four months in accordance with reg 34(1), it must be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period: reg 34(2). Within three months of the notification to him of the professional body's decision, or later with the permission of the appeal body, the registered European lawyer may appeal against the decision to the appeal body specified in Sch 1: reg 35(1). An appeal body may, for the purpose of determining any appeal under Pt V give the exemption and the authorisation to enter into the profession of solicitor or barrister, as the case may be, refuse the appeal or remit the matter to the professional body with such directions as the appeal body sees fit: reg 35(2). The appeal body must give reasons for its decision: reg 35(3).

11 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 30(3).

12 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 30(2).

UPDATE

551 Entry into profession of solicitor or barrister

NOTE 4--The qualification regulations are now defined as European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781: SI 2000/1119 reg 2(1) (definition substituted by SI 2009/1587). An aptitude test is now such a test under the Qualification Regulations reg 26(a): SI 2000/1119 reg 29(1) (amended by SI 2009/1587). SI 2007/2781 amended: SI 2008/2683, SI 2009/1587, SI 2009/1885.

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552. Practice under the title of solicitor or barrister.

Where a registered European lawyer¹ is granted entry into the profession of solicitor or barrister² the following provisions apply³. The lawyer must be entitled to continue to practise in England and Wales, under his home professional title⁴, and to use his home professional title, expressed in an official language of his home state⁵, alongside the title of solicitor or barrister, provided that he continues to be authorised in his home state to pursue professional activities under that title⁶. For the purposes of rules of professional conduct, including those relating to disciplinary and complaints procedures, the lawyer's continuing practice in the United Kingdom under his home professional title is deemed to form part of his practice as a solicitor or barrister, and those rules must apply to his practice under his home professional title as they do to his practice as a solicitor or barrister⁷.

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 As to the meaning of 'solicitor' and 'barrister' see PARA 544 note 8.

3 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 36(1).

4 As to the meaning of 'home professional title' see PARA 545 note 2.

5 As to the meaning of 'home state' see PARA 545 note 2.

6 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 36(2). Where reg 36 applies, a lawyer's registration in accordance with reg 17 with the professional body whose title he has acquired must cease from the date he is entitled to use that title: reg 36(4). However this does not affect any registration the lawyer may have in another part of the United Kingdom: reg 36(5).

7 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 36(3).

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(5) OTHER LEGAL SERVICE PROVIDERS

(i) Claims Management Services

553. Provision of regulated claims management services.

A person may not provide regulated claims management services¹ unless he is an authorised person², he is an exempt person³, the requirement for authorisation has been waived in relation to him⁴ or he is an individual acting otherwise than in the course of a business⁵, and a person commits an offence if he contravenes this provision⁶.

A person also commits an offence if he falsely holds himself out as being an authorised person, an exempt person, or the subject of a waiver⁷, or if he offers to provide regulated claims management services⁸ and provision by him of those services would constitute an offence⁹.

1 'Claims management services' means advice or other services in relation to the making of a claim; and 'claim' means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made by way of legal proceedings, in accordance with a scheme of regulation (whether voluntary or compulsory) or in pursuance of a voluntary undertaking: Compensation Act 2006 s 4(2)(b), (c). Services are regulated if they are of a kind prescribed by order of the Secretary of State, or provided in cases or circumstances of a kind prescribed by order of the Secretary of State: s 4(2)(e). As from a day to be appointed the Secretary of State may not make such an order unless it is made in accordance with a recommendation by the Legal Services Board or the Secretary of State has consulted the Board about the making of the order: s 4(2A) (prospectively added by the Legal Services Act 2007 Sch 19 paras 1, 2). At the date at which this volume states the law no order had been made bringing this provision into force, however, the Compensation (Regulated Claims Management Services) Order 2006, SI 2006/3319, has already been made under the Compensation Act 2006 s 4(2)(e) and services of the kind listed in heads (1)-(5) are prescribed if rendered in relation to the making of a claim described in heads (a)-(f) or in relation to a cause of action that may give rise to such a claim: Compensation (Regulated Claims Management Services) Order 2006, SI 2006/3319, art 4(1). The kinds of service prescribed are:

- 331 (1) advertising for, or otherwise seeking out (for example, by canvassing or direct marketing), persons who may have a cause of action (art 4(2)(a));
- 332 (2) advising a claimant or potential claimant in relation to his claim or cause of action (art 4(2)(b));
- 333 (3) referring details of a claim or claimant, or a cause of action or potential claimant, to another person, including a person having the right to conduct litigation unless such a referral is not undertaken for or in expectation of a fee, gain or reward (art 4(2)(c), (4));
- 334 (4) investigating, or commissioning the investigation of, the circumstances, merits or foundation of a claim, with a view to the use of the results in pursuing the claim (art 4(2)(d));
- 335 (5) representation of a claimant (whether in writing or orally, and regardless of the tribunal, body or person to or before which or whom the representation is made) (art 4(2)(e)).

The kinds of claim are:

- 336 (a) claims for personal injuries, within the meaning of the Civil Procedure Rules 1998, SI 1998/3132 (see **CIVIL PROCEDURE**) (Compensation (Regulated Claims Management Services) Order 2006, SI 2006/3319, art 4(3)(a));

- 337 (b) claims under the Criminal Injuries Compensation Scheme established under the Criminal Injuries Compensation Act 1995 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE**) (Compensation (Regulated Claims Management Services) Order 2006, SI 2006/3319, art 4(3)(b));
- 338 (c) claims for a benefit specified or referred to in the Compensation (Specification of Benefits) Order 2006, SI 2006/3321, art 3 (Compensation (Regulated Claims Management Services) Order 2006, SI 2006/3319, art 4(3)(c));
- 339 (d) claims in relation to employment (including claims in relation to wages and salaries and other employment-related payments, and claims in relation to wrongful or unfair dismissal, redundancy, discrimination and harassment) (art 4(3)(d));
- 340 (e) claims for housing disrepair (that is, claims under the Landlord and Tenant Act 1985 s 11 (see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARAS 416-417) or the Defective Premises Act 1972 s 4 (see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 475), claims in relation to the disrepair of premises under a term of a tenancy agreement or lease or under the common law relating to nuisance or negligence, but not claims for statutory nuisance under the Environmental Protection Act 1990 s 82 (see **NUISANCE** vol 78 (2010) PARAS 210-212) (Compensation (Regulated Claims Management Services) Order 2006, SI 2006/3319, art 4(3)(e));
- 341 (f) claims in relation to financial products or services (art 4(3)(f)).

The Secretary of State may by order provide that a claim for a specified benefit is to be treated as a claim for the purposes of the Compensation Act 2006 Pt 2 (ss 4-15): s 4(5). He may specify a benefit under s 4(5) only if it appears to him to be a United Kingdom social security benefit designed to provide compensation for industrial injury: s 4(6). Accordingly a claim for any of the following benefits is treated as a claim for the purposes of the Compensation Act 2006 Pt 2:

- 342 (i) industrial injuries benefit (Compensation (Specification of Benefits) Order 2006, SI 2006/3321, art 3(a));
- 343 (ii) any supplement or additional allowance, or increase of benefit or allowance, to which a recipient of such a benefit may be entitled under the Social Security Contributions and Benefits Act 1992 (see **SOCIAL SECURITY AND PENSIONS**) or any other Act (Compensation (Specification of Benefits) Order 2006, SI 2006/3321, art 3(b));
- 344 (iii) a benefit under a scheme referred to in the Social Security Contributions and Benefits Act 1992 Sch 8 para 2 or 4 (Compensation (Specification of Benefits) Order 2006, SI 2006/3321, art 3(c));
- 345 (iv) a benefit under the Pneumoconiosis etc (Workers' Compensation) Act 1979 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 168 et seq) (Compensation (Specification of Benefits) Order 2006, SI 2006/3321, art 3(d)).

As to the meaning of 'industrial injuries benefit' see the Social Security Contributions and Benefits Act 1992 s 94; and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 127.

Provision of services includes, in particular, the provision of financial services or assistance, the provision of services by way of or in relation to legal representation, referring or introducing one person to another, and making inquiries; and a person does not provide claims management services by reason only of giving, or preparing to give, evidence, whether or not expert evidence: Compensation Act 2006 s 4(3).

2 'Authorised person' means a person authorised by the Regulator under the Compensation Act 2006 s 5(1) (a) (see PARA 562): s 4(2)(a).

3 The Secretary of State may by order provide that the Compensation Act 2006 s 4(1) does not prevent the provision of regulated claims management services by a person who is a member of a specified body: s 6(1). The Secretary of State may by order provide that s 4(1) does not prevent the provision of regulated claims management services by a specified person or class of person, in specified circumstances or by a specified person or class of person in specified circumstances: s 6(2). Provision by virtue of s 6(1) or s 6(2) may be expressed to have effect subject to compliance with specified conditions: s 6(3). A person is 'exempt' if, or in so far as s 4(1) does not by virtue of s 6 prevent him from providing regulated claims management services: s 6(5). As from a day to be appointed the Secretary of State must not make an order under s 6(1) or s 6(2) unless it is made in accordance with a recommendation made by the Legal Services Board, or the Secretary of State has consulted the Legal Services Board about the making of the order: s 6(3A) (prospectively added by the Legal Services Act 2007 Sch 19 paras 1, 4). At the date at which this volume states the law no such day had been appointed. However the Compensation (Exemptions) Order 2007, SI 2007/209, has been made.

4 Ie by virtue of regulations made under the Compensation Act 2009 s 9.

5 Compensation Act 2006 s 4(1). An individual acts in the course of a business if, in particular, he acts in the course of an employment, or he otherwise receives or hopes to receive money or money's worth as a result of his action: s 4(4). Section 4(1) does not prevent the provision of regulated claims management services by a person who is established or appointed by virtue of an enactment: s 6(4).

6 Compensation Act 2006 s 7(1). A person guilty of such an offence is liable, on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine, or to both, or, on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both: s 7(2) (amended by the Legal Services Act 2007 Sch 19 paras 1, 5(1), (2)). However in relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) the reference to 12 months is to be read as a reference to six months: Compensation Act 2006 s 7(3) (substituted by the Legal Services Act 2007 Sch 19 paras 1, 5(1), (3)). The 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence, is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 140. 'Prescribed sum' means £5,000 or such sum as is for the time being substituted in this definition by order under the Magistrates' Courts Act 1980 s 143(1): see s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 141.

7 Compensation Act 2006 s 11(1), referring to a waiver in accordance with regulations under s 9.

8 A person offers to provide services if he makes an offer to a particular person or class of person, makes arrangements for an advertisement in which he offers to provide services, or makes arrangements for an advertisement in which he is described or presented as competent to provide services: Compensation Act 2006 s 11(3). Where a person commits an offence by causing material to be displayed or made accessible, he is treated as committing the offence on each day during any part of which the material is displayed or made accessible: s 11(5).

9 Compensation Act 2006 s 11(2). A person guilty of such an offence is liable, on conviction on indictment to imprisonment for a term not exceeding two years, to a fine, or to both, or, on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding the statutory maximum, or to both: s 11(4) (amended by the Legal Services Act 2007 Sch 19 paras 1, 8(1), (2)). However in relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 154(1) the reference to 12 months is to be read as a reference to six months: Compensation Act 2006 s 11(6) (substituted by the Legal Services Act 2007 Sch 19 paras 1, 8(1), (3)).

UPDATE

553-554 Provision of regulated claims management services, Exemption of legal practitioners

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/554. Exemption of legal practitioners.

554. Exemption of legal practitioners.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service in the circumstances that the service is provided by a legal practitioner², by a firm, organisation or body corporate that provides the service through a legal practitioner, or by an individual who provides the service at the direction, and under the supervision, of a legal practitioner who is his employer or fellow employee or a director of a company, or a member of a limited liability partnership that provides the services and his employer; and the legal practitioner acts in the normal course of practice in a way permitted by the professional rules to which he is subject³.

1 le the Compensation Act 2006 s 4(1) (see PARA 553).

2 For these purposes, 'legal practitioner' means:

346 (1) a solicitor, barrister or advocate of any part of the United Kingdom;

347 (2) a Fellow of the Institute of Legal Executives;

348 (3) a European lawyer;

349 (4) a registered foreign lawyer; or

350 (5) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society or the General Council of the Bar as a regulated legal profession: Compensation (Exemptions) Order 2007, SI 2007/209, art 4(2).

As to the meaning of 'European lawyer' see the European Communities (Services of Lawyers) Order 1978, SI 1978/1910; and PARA 535. As to the meaning of 'registered foreign lawyer' see the Courts and Legal Services Act 1990 s 89(9); and PARA 628 note 2.

3 Compensation (Exemptions) Order 2007, SI 2007/209, art 4(1).

UPDATE

553-554 Provision of regulated claims management services, Exemption of legal practitioners

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/555. Exemption of businesses regulated by the Financial Services Authority.

555. Exemption of businesses regulated by the Financial Services Authority.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service by a person if in providing that service he is carrying on a regulated activity for the purposes of the Financial Services and Markets Act 2000² or would be doing so except that he is a person who is exempt from the general prohibition³ under that Act or he has the benefit of an exclusion under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁴.

1 Ie the Compensation Act 2006 s 4(1) (see PARA 553).

2 Ie for the purposes of the Financial Services and Markets Act 2000 s 19 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 80). References in the Compensation (Exemptions) Order 2007, SI 2007/209, art 5(1) to a regulated activity carried on by a person must be read with the Financial Services and Markets Act 2000 s 22, any relevant order under s 22 and Sch 2 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84); Compensation (Exemptions) Order 2007, SI 2007/209, art 5.

3 As to the meaning of 'general prohibition' see the Financial Services and Markets Act 2000; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 80.

4 Compensation (Exemptions) Order 2007, SI 2007/207, art 5(1). The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 mentioned in the text is the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 88 et seq).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/556. Exemption of charities etc.

556. Exemption of charities etc.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service by a not-for-profit body, that is, a body that by or under its constitution is required to apply the whole of its net income and any expendable capital, after payment of outgoings for charitable or public purposes and is prohibited² from distributing, directly or indirectly, any part of its net income by way of profits, or its assets, among any of its members³.

1 le the Compensation Act 2006 s 4(1) (see PARA 553).

2 A body is not prevented from being a not-for-profit body for the purposes of the Compensation (Exemptions) Order 2007, SI 2007/209, art 6(1) if its constitution permits:

- 351 (1) the payment, out of the body's funds, of reasonable and proper remuneration for goods or services supplied to the body by a member;
- 352 (2) in the case of a not-for-profit body that is a charity, the payment to a member of a benefit to which he is entitled because he is a beneficiary of the charity; or
- 353 (3) the purchase, out of the body's funds, of indemnity insurance for trustees of the body: art 6(2).

3 Compensation (Exemptions) Order 2007, SI 2007/209, art 6(1).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/557. Exemption of independent complaints reviewers and Motor Insurers Bureau.

557. Exemption of independent complaints reviewers and Motor Insurers Bureau.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service by a person appointed from time to time by a statutory or other public body as an independent complaints reviewer or independent case examiner in the course of carrying out his duties under the appointment².

Nor does the Compensation Act 2006 prevent the provision of a regulated claims management service by the Motor Insurers Bureau³.

1 Ie the Compensation Act 2006 s 4(1) (see PARA 553).

2 Compensation (Exemptions) Order 2007, SI 2007/209, art 7.

3 Compensation (Exemptions) Order 2007, SI 2007/209, art 8. The Motor Insurers Bureau is the company limited by guarantee mentioned in the Road Traffic Act 1988 s 95(2) (see **ROAD TRAFFIC** vol 40(1) (2007 Reissue) PARA 460).

UPDATE

557 Exemption of independent complaints reviewers and Motor Insurers Bureau

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/558. Exemption of Medical Protection Society and medical defence unions.

558. Exemption of Medical Protection Society and medical defence unions.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service by the Medical Protection Society Limited to its members, by the Medical Defence Union Limited to its members or by the Medical and Dental Defence Union of Scotland Limited to its members².

1 I.e. the Compensation Act 2006 s 4(1) (see PARA 553).

2 Compensation (Exemptions) Order 2007, SI 2007/209, art 9.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/559. Exemption of independent trade unions and students' unions.

559. Exemption of independent trade unions and students' unions.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service by an independent trade union² to a member³ (including a retired member or a student member) of the trade union, a member of the family of that member⁴ or a former member of the trade union⁵ to whom the trade union may, under its rules, provide claims management services, or a member of the family of such a former member⁶.

The Compensation Act 2006 does not prevent the provision of a regulated claims management service by a students' union⁷ to a member of the students' union or⁸ a member of a constituent or affiliated association or body⁹.

1 le the Compensation Act 2006 s 4(1) (see PARA 553).

2 As to the meaning of 'independent trade union' see the Trade Union and Labour Relations (Consolidated) Act 1992; and **EMPLOYMENT** vol 39 (2009) PARA 91 (definition applied by the Compensation (Exemptions) Order 2007, SI 2007/209, art 10(2)).

3 'Member' of a trade union does not include a person who, under the rules of the trade union, is a member only for the purpose of pursuing a claim or claims: Compensation (Exemptions) Order 2007, SI 2007/209, art 10(3)(b).

4 Whether a person is a member of the family of a member of a trade union is to be decided in accordance with the rules of the trade union: Compensation (Exemptions) Order 2007, SI 2007/209, art 10(3)(c).

5 Whether a person is or has been a member (including a retired member or a student member) of a trade union is to be decided in accordance with the rules of the trade union: Compensation (Exemptions) Order 2007, SI 2007/209, art 10(3)(a).

6 Compensation (Exemptions) Order 2007, SI 2007/209, art 10(1). An exemption of a trade union under art 10 is subject to compliance by the trade union with the condition that the trade union, in providing regulated claims management services, must act in accordance with the code of practice for the provision of regulated claims management services by trade unions issued by the Secretary of State on 28 November 2006: art 10(4). The Code of Practice for the provision of Regulated Claims Management Services by Trade Unions sets out the key principles by which trade unions are governed when providing regulated claims management services and breach of the code could lead to the Secretary of State removing the exemption: see the Code of Practice for the provision of Regulated Claims Management Services by Trade Union.

7 As to the meaning of 'students' union' see the Education Act 1994 s 20; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 1060.

8 This applies in the case of a students' union referred to in the Education Act 1994 s 20(3) (see **EDUCATION** vol 15(2) (2006 Reissue) PARA 1060).

9 Compensation (Exemptions) Order 2007, SI 2007/209, art 11.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/560. Exemption of certain providers of referrals.

560. Exemption of certain providers of referrals.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service of referring details of potential claims or potential claimants to another person if:

- 467 (1) the person who refers those details (the 'introducer') provides no other regulated claims management service²;
- 468 (2) the provision of the service is incidental to the introducer's main business³;
- 469 (3) the details are referred to authorised persons or legal practitioners or firms of legal practitioners⁴;
- 470 (4) the introducer refers such details only to persons of those kinds⁵;
- 471 (5) of the cases that the introducer refers to such persons, he is paid, in money or money's worth, for no more than 25 cases per calendar quarter⁶; and
- 472 (6) the persons to whom the details are referred must be satisfied that the introducer obtains those details in a way consistent with the rules prescribed⁷ by the Regulator⁸.

1 Ie the Compensation Act 2006 s 4(1) (see PARA 553).

2 Compensation (Exemptions) Order 2007, SI 2007/209, art 12(2)(a).

3 Compensation (Exemptions) Order 2007, SI 2007/209, art 12(2)(b)

4 Compensation (Exemptions) Order 2007, SI 2007/209, art 12(2)(c).

5 Compensation (Exemptions) Order 2007, SI 2007/209, art 12(2)(d).

6 Compensation (Exemptions) Order 2007, SI 2007/209, art 12(2)(e).

7 Ie the rules prescribed under the Compensation Act 2006 Schedule para 8 (see PARA 563).

8 Compensation (Exemptions) Order 2007, SI 2007/209, art 12(2)(f). This does not apply in the case of a referral to a legal practitioner or firm of legal practitioners: art 12(3). As to the meaning of 'legal practitioner' see art 4(2); PARA 554 note 2 (definition applied by art 12(1)).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/561. Exemption for claims in certain circumstances.

561. Exemption for claims in certain circumstances.

The Compensation Act 2006¹ does not prevent the provision of a regulated claims management service in the circumstances that:

- 473 (1) a claim has been made by a person (the 'claimant') against another person (the 'defendant')²; and
- 474 (2) the service is provided to the defendant in connection with the making of a counterclaim against the claimant arising out of the same set of facts as the claim referred to in head (1) or the making of a claim against a third party (whether for contribution, as a subrogated claim or otherwise) which is incidental to or consequent on the claim referred to in head (1)³.

1 The Compensation Act 2006 s 4(1) (see PARA 553).

2 Compensation (Exemptions) Order 2007, SI 2007/209, art 13 (added by SI 2007/1090).

3 Compensation (Exemptions) Order 2007, SI 2007/209, art 13 (added by SI 2007/1090).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/562. Designation of the Regulator.

562. Designation of the Regulator.

The Secretary of State may by order designate a person (the 'Regulator')¹ to authorise persons to provide regulated claims management services², to regulate the conduct of authorised persons, and to exercise such other functions as are conferred on the Regulator³. The Secretary of State may designate a person only if satisfied that the person:

- 475 (1) is competent to perform the functions of the Regulator;
- 476 (2) will make arrangements to avoid any conflict of interest between the person's functions as Regulator and any other functions; and
- 477 (3) will promote the interests of persons using regulated claims management services, including, in particular, by setting and monitoring standards of competence and professional conduct for persons providing regulated claims management services, promoting good practice by persons providing regulated claims management services, in particular in relation to the provision of information about charges and other matters to persons using or considering using the services, promoting practices likely to facilitate competition between different providers of regulated claims management services, and ensuring that arrangements are made for the protection of persons using regulated claims management services, including arrangements for the handling of complaints about the conduct of authorised persons⁴.

The Regulator must comply with any directions or guidance given to him, try to meet any targets set for him⁵ and, until a day to be appointed, have regard to any code of practice issued to him by the Secretary of State⁶.

1 At the date at which this volume states the law no such orders had been made. A reference to the Regulator includes a reference to a person acting on behalf of the Regulator or with his authority: Compensation Act 2006 s 5(7). As from a day to be appointed the Secretary of State may designate a person only on the recommendation of the Legal Services Board: s 5(1A) (prospectively added by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (2)). At the date at which this volume states the law no such day had been appointed. The Secretary of State may by order revoke a person's designation under the Compensation Act 2006 s 5(1): s 5(8). However as from a day to be appointed the Secretary of State may revoke the designation on the recommendation of the Legal Services Board: s 5(8) (prospectively amended by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (8)(a)).

For the purposes of the Legal Services Act 2007 Pt 6 (and ss 1, 21, 27 as they apply in relation to Pt 6):

- 354 (1) the Claims Management Services Regulator is to be treated as an approved regulator (s 161(1)(a));
- 355 (2) regulated claims management services are to be treated as a reserved legal activity (s 161(1)(b));
- 356 (3) a person authorised by the Claims Management Services Regulator, under the Compensation Act 2006 Pt 2, to provide regulated claims management services is to be treated as an authorised person in relation to that activity (Legal Services Act 2007 s 161(1)(c));
- 357 (4) the Claims Management Services Regulator is to be treated as a relevant authorising body in relation to such a person (s 161(1)(d)); and

- 358 (5) regulations under the Compensation Act 2006 s 9 and Schedule (regulations about the functions of the Claims Management Services Regulator etc) are to be treated as regulatory arrangements of the Claims Management Services Regulator (Legal Services Act 2007 s 161(1)(e)).

For the purposes of ss 112 and 145 (as extended by s 161) a person authorised by the Claims Management Services Regulator under the Compensation Act 2006 Pt 2 to provide regulated claims management services is to be treated as a 'relevant authorised person' in relation to the Regulator: Legal Services Act 2007 s 161(2). The Compensation Act 2006 s 9 and Schedule (regulations about the functions of the Claims Management Regulator etc) are subject to any requirements imposed by the Legal Services Act 2007 Pt 6 in relation to the regulatory arrangements of the Claims Management Regulator: s 161(3).

For the purposes of s 161 'Claims Management Services Regulator' means the person designated under the Compensation Act 2006 s 5(1) or at a time when no person is so designated, the Board and 'regulated claims management services' has the same meaning as in the Compensation Act 2006 Pt 2: Legal Services Act 2007 s 161(4).

2 As to the meaning of 'regulated claims management services' see the Compensation Act 2006 s 4(2)(e); and **DAMAGES**.

3 Compensation Act 2006 s 5(1). The Secretary of State may pay grants to the Regulator (which may be on terms and conditions, including terms and conditions as to repayment with or without interest): s 5(6). The Secretary of State may by order transfer (whether for a period of time specified in the order or otherwise) a function of the Regulator to the Secretary of State and while no person is designated under s 5(1) the Secretary of State must exercise functions of the Regulator: s 5(9), (10). However, as from a day to be appointed s 5(9), (10) is amended and the Secretary of State may, on the recommendation of the Legal Services Board, by order transfer (whether for a period of time specified in the order or otherwise) a function of the Regulator to the Legal Services Board, and while no person is designated under s 5(1) the Legal Services Board must exercise functions of the Regulator: s 5(9), (10) (prospectively amended by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (6), (7)). In discharging its functions under the Compensation Act 2006 s 5(9), (10) the Legal Services Board must take such steps as are necessary to ensure an appropriate financial and organisational separation between the activities of the Board that relate to the carrying out of those functions and the other activities of the Board: s 5(11) (prospectively added by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (9)). At the date at which this volume states the law no such day had been appointed.

Until a day to be appointed if the Secretary of State thinks that no existing person, whether an individual or a body corporate or unincorporate, is suitable for designation, he may by order establish a person for the purpose of being designated and such an order may include for the appointment of members, for funding, for dissolution (which may include provision enabling the Secretary of State to make provision for the transfer of property, rights and liabilities): Compensation Act 2006 ss 5(3), 15(6) (prospectively repealed by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (4), Sch 23). At the date at which this volume states the law no such day had been appointed.

The Secretary of State must make regulations about authorisations under the Compensation Act 2006 s 5(1).

4 Compensation Act 2006 s 5(2). As from a day to be appointed s 5(2) is amended by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (3) and applies to where the Legal Services Board may recommend a person for designation instead of where the Secretary of State may designate a person. At the date at which this volume states the law no such day had been appointed.

5 See the Compensation Act 2006 s 5(4)(a), (b), (d). The directions, guidance and targets referred to in the text are ones issued and set by the Secretary of State; however, as from a day to be appointed they are issued and set by the Legal Services Board: see s 5(4)(a), (b), (d) (prospectively amended by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (5)(a)). The Regulator must provide the Secretary of State with any report or information requested unless it would be in contravention of any other enactment: see the Compensation Act 2006 s 5(4)(e). However as from a day to be appointed any such report or information is instead to be provided to the Legal Services Board: see s 5(4)(e) (prospectively amended by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (5)(a)). At the date at which this volume states the law no such day had been appointed.

6 See the Compensation Act 2006 s 5(4)(c) (prospectively repealed by the Legal Services Act 2007 Sch 19 paras 1, 3(1), (5)(b), Sch 23)). At the date at which this volume states the law no such day had been appointed. The Secretary of State must lay before Parliament any code of practice issued by him to the Regulator: Compensation Act 2006 s 5(5).

UPDATE

562 Designation of the Regulator

NOTES 3, 6--Repeals effected by Legal Services Act 2007 Sch 23 in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/563. Claims management regulations.

563. Claims management regulations.

The Secretary of State must make regulations about authorisations given to provide regulated claims management services¹ and the functions of the Regulator². Such regulations may confer a discretion on the Regulator³. The regulations:

- 478 (1) may permit the Regulator to waive the requirement for authorisation⁴ in specified cases or circumstances and may, in particular, permit or require the Regulator to provide for waiver to be subject to a condition of a kind specified in the regulations⁵;
- 479 (2) must prescribe the procedure for applying to the Regulator for authorisation⁶;
- 480 (3) must require the Regulator not to grant an application for authorisation unless satisfied of the applicant's competence and suitability to provide regulated claims management services of the kind to which the application relates⁷;
- 481 (4) may:
 - 11 15. (a) provide for authorisation to be on specified terms or subject to compliance with specified conditions⁸;
 - 16. (b) permit the Regulator to grant authorisation on terms or subject to conditions⁹;
 - 17. (c) permit the Regulator to grant an application for authorisation only to a specified extent or only in relation to specified matters, cases or circumstances¹⁰;
- 12 482 (5) may be made in relation to fees¹¹;
- 483 (6) must require the Regulator to prescribe rules for the professional conduct of authorised persons¹²;
- 484 (7) must enable the Regulator to issue one or more codes of practice about the professional conduct of authorised persons¹³;
- 485 (8) must provide for the Regulator to investigate complaints about the professional conduct of an authorised person¹⁴;
- 486 (9) may require, or permit the Regulator to require, an authorised person to take out a policy of professional indemnity insurance in respect of his actions in the course of providing or purporting to provide regulated claims management services¹⁵;
- 487 (10) may require the Regulator to establish a scheme to compensate a client of an authorised person where money is paid to the authorised person in complete or partial satisfaction of the client's claim and the client is unable to obtain all or part of the money because the authorised person becomes insolvent or is otherwise unable or unwilling to pay¹⁶;
- 488 (11) may permit or require the Regulator to take action of a specified kind for the purpose of assessing compliance with terms or conditions of authorisations¹⁷;
- 489 (12) may enable the Regulator, for the purpose of investigating a complaint about the activities of an authorised person or for the purpose of assessing compliance with terms and conditions of an authorisation, to require the provision of information or documents¹⁸;
- 490 (13) may make provision about the exercise by the Regulator of a power under enforcement provisions¹⁹.

- 1 le authorisations under the Compensation Act 2006 s 5(1) (see PARA 562).
- 2 Compensation Act 2006 s 9(1). As from a day to be appointed, such regulations may not be made unless they are made in accordance with a recommendation made by the Legal Services Board or the Secretary of State has consulted the Legal Services Board about the making of the regulations: s 9(2A) (prospectively added by the Legal Services Act 2007 Sch 19 paras 1, 7). At the date at which this volume states the law no such day had been appointed, however the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, have already been made (see PARA 564 et seq).
- 3 Compensation Act 2006 Schedule paras 1, 2.
- 4 le the requirement for authorisation as mentioned in the Compensation Act 2006 s 4(1)(c) (see PARA 553).
- 5 Compensation Act 2006 Schedule para 3(1), (3). Regulations may permit waiver in relation to a person only if the Secretary of State intends to exempt the person under s 6 (see PARA 553) and for a single period not exceeding six months: Schedule para 3(2). As to regulations relating to waiver see the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, regs 6, 7; and PARA 564.
- 6 Compensation Act 2006 Schedule para 4(1). Regulations may, in particular, require the provision of information or documents relating to the applicant or to any person who appears to the Regulator to be connected with the applicant: Schedule para 4(2). As to such regulations see the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 8; and PARA 571.
- 7 Compensation Act 2006 Schedule para 5(1). The Regulator must apply such criteria, and have regard to such matters, as the regulations specify which may in particular:
 - 359 (1) refer to a provision of directions given or guidance issued (or as from a day to be appointed a code issued) under s 5(4) (see PARA 562) (Schedule para 5(2), (3)(a) (prospectively amended by the Legal Services Act 2007 Sch 19 paras 1, 11(1), (2)));
 - 360 (2) relate to persons who are or are expected to be employed or engaged by, or otherwise connected with, the applicant (Compensation Act 2006 Schedule para 5(2), (3)(b));
 - 361 (3) relate to criminal records, proceedings in any court or tribunal, proceedings of a body exercising functions in relation to a trade or profession, financial circumstances, management structure, actual or proposed connections or arrangements with other persons, qualifications, actual or proposed arrangements for training, arrangements for accounting, practice or proposed practice in relation to the provision of information about fees, arrangements or proposed arrangements for holding clients' money, arrangements or proposed arrangements for insurance (Schedule para 5(2), (3)(c)).
- 8 Compensation Act 2006 Schedule para 6(a).
- 9 Compensation Act 2006 Schedule para 6(b).
- 10 Compensation Act 2006 Schedule para 6(c).
- 11 See the Compensation Act 2006 Schedule para 7: Such regulations may:
 - 362 (1) enable the Regulator to charge:
 3. (a) fees in connection with applications for, or the grant of, authorisation;
3
 4. (b) periodic fees for authorised persons;
4
 - 363 (2) specify the consequences of failure to pay fees;
 - 364 (3) permit the charging of different fees for different cases or circumstances (which may, in particular, be defined wholly or partly by reference to turnover or other criteria relating to an authorised person's business);
 - 365 (4) permit the waiver, reduction or repayment of fees in specified circumstances;
 - 366 (5) provide for the amount of fees to be prescribed or controlled by the Secretary of State;

- 367 (6) make provision for the manner in which fees are to be accounted for;
- 368 (7) make provision for the application of income from fees (which may, in respect of a time when the Secretary of State is exercising functions of the Regulator under s 5(9) or s 5(10) (see PARA 562), include provision permitting or requiring payment into the Consolidated Fund) (Schedule para 7(a)-(g)).

The Fees Rules 2006 apply to all applications for authorisation to commence on or after 6 April 2007.

As from a day to be appointed the words 'Legal Services Board' are substituted for the words 'Secretary of State' in heads (5) and (7) and the words 'after consultation with the Secretary of State' are added at the end of head (7): see the Compensation Act 2006 Schedule para 7(e), (g) (prospectively amended by the Legal Services Act 2007 Sch 19 paras 1, 11(3)). At the date at which this volume states the law no such day had been appointed.

12 Compensation Act 2006 Schedule para 8(1). Such regulations must include provision:

- 369 (1) about the manner in which rules are to be prepared and published (which may, in particular, include provision requiring consultation and the submission of a draft to the Secretary of State for approval) (Schedule para 8(2)(a));
- 370 (2) about the consequences of failure to comply with the rules (which may, in particular, include provision for rules to be treated as conditions of authorisations and provision enabling the Regulator to impose conditions on, suspend or cancel authorisations) (Schedule para 8(2)(b)).

As from a day to be appointed the words 'Legal Services Board' are substituted for the words 'Secretary of State' in head (1) by the Legal Services Act 2007 Sch 19 paras 1, 11(1), (4). At the date at which this volume states the law no such day had been appointed.

13 Compensation Act 2006 Schedule para 9(1). Such regulations must include provision:

- 371 (1) about the manner in which a code is to be prepared and published (which may, in particular, include provision requiring consultation and the submission of a draft to the Secretary of State for approval) (Schedule para 9(2)(a));
- 372 (2) about the consequences of failure to comply with a code (which may, in particular provide for compliance with a code to be treated as a condition of authorisations and enable the Regulator to impose conditions on, suspend or cancel authorisations) (Schedule para 9(2)(b)).

As from a day to be appointed the words 'Legal Services Board' are substituted for the words 'Secretary of State' in head (1) by the Legal Services Act 2007 Sch 19 paras 1, 11(1), (5). At the date at which this volume states the law no such day had been appointed.

14 Compensation Act 2006 Schedule para 10(1). Such regulations must enable the Regulator to:

- 373 (1) impose conditions on a person's authorisation (Schedule para 10(2)(a));
- 374 (2) suspend a person's authorisation (Schedule para 10(2)(b));
- 375 (3) cancel a person's authorisation (Schedule para 10(2)(c)).

15 Compensation Act 2006 Schedule para 11(1). Such regulations may in particular:

- 376 (1) make provision about the level or nature of insurance cover to be provided by the policy (Schedule para 11(2)(a));
- 377 (2) include provision about failure to comply (which may, in particular, provide for compliance to be treated as a condition of authorisations or enable the Regulator to impose conditions on, suspend or cancel authorisations) (Schedule para 11(2)(b)).

16 Compensation Act 2006 Schedule para 12(1). In particular, regulations may make provision:

- 378 (1) about the purchase of bonds or other forms of insurance or indemnity (Schedule para 12(2)(a));
- 379 (2) about the funding of the scheme (which may include the application of part of fees charged in accordance with Schedule para 7 and may not include payments, or other financial assistance, by a Minister of the Crown) (Schedule para 12(2)(b));

380 (3) about procedure in connection with compensation (including criteria to be applied) (Schedule para 12(2)(c));

381 (4) about the amount of compensation (Schedule para 12(2)(d)).

17 Compensation Act 2006 Schedule para 13.

18 Compensation Act 2006 Schedule para 14(1). The Regulations may provide that on an application by the Regulator a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising the Regulator: (1) to enter and search premises on which a person conducts or is alleged to conduct regulated claims management business, for the purpose of investigating a complaint about the activities of an authorised person, or assessing compliance with terms and conditions of an authorisation; or (2) to take possession of written or electronic records found on the search for the purpose of taking copies in accordance with regulations under Schedule para 14(3): Schedule para 14(2) (amended by the Legal Services Act 2007 Sch 19 paras 1, 11(1), (6)). Regulations may enable the Regulator to take copies of written or electronic records found on a search by virtue of Schedule para 14(2) for a purpose specified therein: Schedule para 14(3).

Regulations may enable the Regulator to impose conditions on, suspend or cancel a person's authorisation if a requirement imposed by virtue of Schedule para 14(1) is not complied with or an attempt to exercise a power by virtue of Schedule para 14(2) or (3) is obstructed: Schedule para 14(4). Regulations must:

382 (a) specify matters of which a judge or justice of the peace must be satisfied, or to which he must have regard, before issuing a warrant under Schedule para 14(2) (Schedule para 14(6)(a));

383 (b) regulate the exercise of a power under or by virtue of Schedule para 14(1), (2) or (3) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise) (Schedule para 14(6)(b)).

For the purposes of Schedule para 14 references to the Regulator include a reference to a person authorised by him in writing: Schedule para 14(5).

19 Compensation Act 2006 Schedule para 15. The enforcement provisions mentioned in the text refer to the exercise of the Regulator of a power under s 8 (see PARA 571).

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564. Waiver of requirement for authorisation.

The Regulator may waive the requirement for authorisation in relation to a person if the Secretary of State intends to exempt the person¹ and if the Regulator is satisfied that requiring the person to become authorised would be unduly burdensome to the person, or would not achieve the objects of the Compensation Act 2006 and the waiver would not result in undue risk to persons whose interests the Compensation Act 2006 is intended to protect².

The Regulator may impose a condition on such a waiver³ and, if he does so, must include a statement of the condition in the notice of the waiver⁴. In particular⁵ such a condition may be to the effect that:

- 491 (1) the person who has the benefit of the waiver tells clients or potential clients in writing that the person is providing a regulated claims management service⁶;
- 492 (2) the person tells clients or potential clients in writing that the person is providing that service subject to the waiver, pending an exemption⁷;
- 493 (3) the person meets standards of service recommended by the Secretary of State⁸.

1 Ie under the Compensation Act 2006 s 6 (see PARA 553).

2 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 6(1). The Regulator must give the person a written notice of the waiver: reg 6(2). A notice may be issued by means of fax transmission or electronic communication: reg 5. The waiver has effect for six months from the date of the notice, and cannot be renewed: reg 7(4). However, if an order under the Compensation Act 2006 s 6(2) (see PARA 553) exempting the person comes into effect before the waiver would cease to have effect under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 7(4), the waiver ceases to have effect immediately before the order comes into effect: reg 7(5).

3 Ie a waiver under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 6.

4 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 7(1).

5 This is without limiting the effect of the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 7(1).

6 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 7(2)(a). The regulated claims management service is one within the meaning of the Compensation Act 2006 s 4(2)(e) (see PARA 553).

7 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 7(2)(b). The exemption mentioned in the text is an exemption by order under the Compensation Act 2006 s 6 (see PARA 553).

8 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 7(2)(c). If the Regulator imposes on a waiver a condition of the kind referred to in reg 7(2)(c), the Regulator must set out the standard in the notice of the waiver: reg 7(3).

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565. Grant, refusal and surrender of authorisations.

A person must apply for authorisation in writing in the form approved by the Regulator for the purpose and supply the information and documents required by the form¹ in accordance with any directions on it². If the Regulator requires more information than that given in the application or another document, to consider an application, the Regulator may ask for the information or document by written notice to the applicant³. The Regulator must decide to grant or refuse an authorisation within three months after the application for it is made⁴.

If the Regulator has approved the grant of an authorisation to a person, and the person pays the fee for the first year of the authorisation's currency, the Regulator must grant the authorisation by giving the person a written instrument of authorisation⁵.

The Regulator must not grant an application for authorisation unless he is satisfied that the applicant is competent and suitable to provide the regulated claims management service to which the application relates⁶.

An authorised person may surrender his authorisation by giving notice in writing to the Regulator⁷.

1 If the Regulator approves the use of an interactive system on-line for the purposes of application, the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 8(2) requires an applicant to complete and submit an application, and provide documents, in accordance with the directions given by the interactive system: reg 8(3).

2 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 8(1), (2). An application is not taken to have been made until the applicant has paid the application fee: reg 9(1). If the Regulator has authorised another person to receive applications on his behalf, the application fee may be paid to that other person: reg 9(2). The Regulator must, by written instrument, determine: (1) fees, or a scale of fees, for the making of applications under Part 3; and (2) annual fees, or a scale of annual fees, for authorisations: reg 15(1). A determination under head (2) may provide for the fee to be calculated by reference to the annual turnover or expected annual turnover of the business of the applicant or authorised person concerned: reg 15(2). A determination under reg 15(1):

- 384 (a) may make provision that applies generally, or only in specified cases or circumstances (reg 15(3)(a));
- 385 (b) may make different provision for different cases or circumstances (reg 15(3)(b));
- 386 (c) may include transitional, incidental or consequential provisions (reg 15(3)(c)); and
- 387 (d) may provide for a fee of zero amount in specified circumstances (reg 15(3)(d)).

Before making such a determination, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such other organisations, as he considers appropriate: reg 15(4). A determination under reg 15(1) (except a determination by the Secretary of State while exercising functions of the Regulator) has no effect unless a draft of it has been approved in writing by the Secretary of State: reg 15(5). The Regulator may, by written instrument, revoke or amend any determination in force from time to time under reg 15, but such a revocation or amendment (except a revocation or amendment by the Secretary of State while exercising the functions of the Regulator) has no effect unless a draft of it has been approved by the Secretary of State: reg 16(1). A revocation or amendment may include transitional, incidental or consequential provisions: reg 16(2). The Claims Management Regulation Fees Determination 2008 has been made under the Compensation (Claims Management Services) Regulations 2008, SI 2008/3322, regs 15, 16. Invoices for fees may be sent electronically and reg 5 (see PARA 564) applies to an invoice so sent: reg 17. If a cheque is accepted in payment of a fee, the fee is taken not to have been paid

until the cheque is honoured in full: reg 18. The Regulator may refund all or part of a fee to an applicant or authorised person if he is satisfied that where the fee was calculated by reference to the applicant's or authorised person's expected turnover from claims management activities during a period, the actual turnover for the period was substantially less than the expected turnover or the applicant or authorised person has been otherwise overcharged: reg 19(1). If an authorised person surrenders his authorisation, the Regulator may refund so much of the fee for that year as represents the difference between the amount paid and the amount that the Regulator is satisfied was properly due for the part of the year until the surrender: reg 19(2). The Regulator may cancel an authorised person's authorisation if the Regulator sends an invoice for a fee to the person and the person does not pay the fee within one month after the date of the invoice: reg 20.

3 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 8(4). If the Regulator makes a request under reg 8(4), the period between when the Regulator makes the request and when the applicant provides the information or document requested does not count for the purposes of reg 11: reg 8(5). If the Regulator has authorised another person to carry out tasks of collecting information or otherwise processing applications, that other person may make a request under reg 8(4), and a request so made has the same effect as a request by the Regulator: reg 8(6).

4 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 11.

5 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 13(1). The instrument of authorisation must specify a day as its date of effect: reg 13(2). An authorisation has effect from the date of effect specified in the instrument of the authorisation and continues in effect until revoked or surrendered: reg 13(3). If the Regulator grants an authorisation subject to a condition, the Regulator must set the condition out in the instrument of authorisation: reg 13(4). If the Regulator refuses to grant an authorisation to a person, or grants an authorisation subject to a condition not sought by the person, the Regulator must give written notice to the person, setting out in the notice the decision and the reasons for it, a brief statement of the evidence on which the Regulator relied and a statement of the person's right to appeal to the Tribunal, including the Tribunal's address to which an appeal notice may be sent and the time limit for such an appeal: reg 13(5).

6 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 10(1). For the purposes of making a decision regarding the suitability of an applicant, the criteria are the following:

- 388 (1) that the applicant does not have a history of committing relevant criminal offences (in particular, perjury or an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection) or breaches of any law or rule of practice regulating the provision of financial, legal or other relevant services (reg 10(2)(a));
- 389 (2) there are no relevant proceedings (whether completed or not) in any court or tribunal, and in particular any proceedings in relation to financial services, consumer credit or consumer protection, against the applicant (reg 10(2)(b));
- 390 (3) if the applicant holds or proposes to hold clients' money, the applicant has appropriate arrangements or proposed arrangements for holding such money (reg 10(2)(c)); and
- 391 (4) that the applicant has no arrangements with another person that might expose it to any conflict of interest (reg 10(2)(d)).

For the purposes of making a decision regarding the suitability of an applicant, the Regulator may have regard to:

- 392 (a) the applicant's financial circumstances (reg 10(3)(a));
- 393 (b) the applicant's management arrangements, including how financial and other control is exercised or is to be exercised; who is responsible for the applicant's financial and other management; measures to maintain its solvency; the provision of verified, certified or audited accounts; any previous relationship with a company that has become insolvent, or against which an insolvency petition has been brought (reg 10(3)(b));
- 394 (c) the applicant's actual or proposed connections or arrangements with other persons (including, in the case of an applicant that is a body corporate, its relationship with any parent or subsidiary company) and the applicant's arrangements to avoid conflicts of interest (reg 10(3)(c));
- 395 (d) the applicant's policies and arrangements or proposed arrangements for training, and monitoring the competence of, its staff, and for recruiting staff (reg 10(3)(d));
- 396 (e) the applicant's practice or proposed practice in relation to providing information to clients about fees (reg 10(3)(e));

- 397 (f) the applicant's arrangements or proposed arrangements for professional indemnity insurance (reg 10(3)(f)).

In the case of an applicant other than an individual, it is a criterion for the grant of an application for authorisation that in the case of an applicant that is a body corporate, each of the applicant's directors; in the case of an applicant that is a partnership or other body of persons, each of its members; and each other person who appears to the Regulator to be able to exert significant influence on the applicant's policy or management, is suitable to be associated with the provision of regulated claims management services of the kind to which the application relates: reg 10(4).

For the purpose of making a decision regarding the suitability of an individual to be associated with the provision of regulated claims management services, being an individual who is a director or partner of an applicant, or is otherwise able to exert significant influence on the applicant's policy or management, the Regulator may have regard to:

- 398 (i) the individual's criminal record (if any), and in particular any conviction for perjury, or an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection (reg 10(5)(a));
- 399 (ii) whether the individual has ever been disqualified as a company director (reg 10(5)(b));
- 400 (iii) any relevant proceedings (whether completed or not) of a body exercising functions in relation to a trade or profession, and in particular any proceedings that may result in the withdrawal or revocation of the right to practise a profession, engage in a business or provide a service (reg 10(5)(c));
- 401 (iv) any withdrawal or revocation of his right to practise a profession, engage in a business or provide a service (reg 10(5)(d));
- 402 (v) his financial circumstances (reg 10(5)(e));
- 403 (vi) his qualifications and experience (reg 10(5)(f)).

7 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 14(1). Such a notice has effect, if it specifies a day as the day on which it is to have effect, and that day is, or is after, the day on which the Regulator receives it, on the specified day; or, in any other case, on the day on which the Regulator receives it: reg 14(2).

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566. Conditions of authorisations.

The Regulator may grant an authorisation subject to a condition or conditions¹. The Regulator may revoke the imposition of a condition on an authorisation if he is satisfied that it is no longer necessary for the authorisation to be subject to the condition².

In addition to any condition imposed by the Regulator, the following are conditions of an authorised person's authorisation:

- 494 (1) that the person complies with the rules³;
- 495 (2) that the person complies with any applicable code of practice⁴;
- 496 (3) that if the person accepts referrals of potential clients from another person (not being a person required to be an authorised person), the person takes reasonable steps to ensure that the other person obtains the business in a way consistent with the rules⁵;
- 497 (4) that the person complies with any direction of the Regulator under Part 5 (which deals with indemnity insurance)⁶;
- 498 (5) that the person permits inspection by the Regulator under Part 8 (which is about routine audit)⁷;
- 499 (6) that in each year, if the Regulator so requires by notice in writing, the person certifies in writing to the Regulator that during the past year the person has complied with the conditions mentioned in heads (1), (2) and (3) and any other condition of the authorisation specified in the notice⁸;
- 500 (7) that in each year, within one month after the Regulator issues an invoice to the person for the annual fee, the person pays the Regulator the amount of that fee in accordance with the invoice⁹;
- 501 (8) that the person complies with a direction¹⁰ to make redress for failing to comply with rules of code of practice or a direction¹¹ to provide the Regulator with information or documents regarding a complaint¹²;
- 502 (9) that the person implements, promptly and in full, any direction¹³ in relation to the future handling of complaints¹⁴.

¹ Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(1). In particular, and without limiting the effect of reg 12(1), a condition may be:

- 404 (1) if the authorised person was granted authorisation despite not satisfying a requirement for authorisation, that the person satisfies the requirement within a specified period (reg 12(2)(a));
- 405 (2) a condition as to the way in which the person provides the service (reg 12(2)(b));
- 406 (3) that the person provides only a specified service or services (reg 12(2)(c)); or
- 407 (4) that the person provides a service only in specified circumstances (reg 12(2)(d)).

The Regulator may, at a reasonable time and on reasonable notice, inspect the records of an authorised person for the purposes of assessing the authorised person's compliance with the conditions of authorisation: reg 30(1). However this does not require an authorised person to produce, or authorise the Regulator to require an authorised person to produce, any document or thing that is an item subject to legal privilege: reg 30(2). As to the meaning of 'legal privilege' for this purpose see Police and Criminal Evidence Act 1984 s 10; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 873.

2 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(3). If the Regulator revokes the imposition of a condition, the Regulator must give the authorised person a new instrument of authorisation under reg 13 (see PARA 565) that does not show the condition: reg 12(4).

3 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(a).

4 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(b).

5 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(c).

6 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(d).

7 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(e).

8 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(f).

9 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(g).

10 In any direction given under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 27 (see PARA 568).

11 In any direction given under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 28(2) (see PARA 569).

12 See the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(h).

13 In any direction under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 29(1) or 29(3).

14 See the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(i).

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567. Indemnity insurance.

Certain authorised persons who provide regulated claims management services¹ must take out and maintain professional indemnity insurance from an insurance undertaking² authorised to transact professional indemnity insurance in:

- 503 (1) a Zone A country³;
- 504 (2) the Channel Islands, Gibraltar, Bermuda or the Isle of Man⁴.

The contract of professional indemnity insurance must provide cover where an authorised person or an employee⁵ represents a client in the course of providing or purporting to provide regulated claims management services and may be liable for their actions⁶. The minimum level of indemnity must be £250,000 for a single claim and £500,000 for an aggregated claim, and where the contract includes an excess, this must not be greater than £10,000 per claim⁷. It must also contain cover in respect of legal defence costs and provide for continuous cover for all claims first made against the insured during the period of insurance or made against the insured during or after the period of insurance and arising from claims first notified to the insurer during the period of insurance⁸.

1 The authorised persons who provide regulated claims management services within the meaning of the Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 4(2)(e). An authorised person who provides regulated claims management services in relation to claims prescribed by art 4(3)(a) must take out and maintain professional indemnity insurance, in accordance with Pt 5: art 21A(2) (added by SI 2008/1441).

2 For this purpose 'insurance undertaking' means an undertaking, whether or not an insurer, which carries on insurance business which is the business of effecting or carrying out contracts of insurance: Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 21 (substituted by SI 2008/1441).

3 For this purpose 'Zone A country' means any EEA state, a country which is a full member of the Organisation for Economic Co-operation and Development or a country which is contained on a list published by the International Monetary Fund as being a country which has concluded special lending arrangements with the International Monetary Fund associated with the International Monetary Fund's General Arrangements to Borrow, except any country which is contained on a list published by the Regulator as being a country which has rescheduled its external sovereign debt: Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 21 (substituted by SI 2008/1441).

4 Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 21A(3) (added by SI 2008/1441).

5 For these purposes 'employee' means an individual who is employed or appointed by an authorised person in connection with that person's business, whether under a contract of service or for services or otherwise; or whose services, under an arrangement between the authorised person and a third party, are placed at the disposal and under the control of the authorised person: Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 21 (substituted by SI 2008/1441).

6 Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 21B(1)(b) (added by SI 2008/1441).

7 Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 21B(1)(a), (2), (3) (added by SI 2008/1441).

8 Compensation (Regulated Claims Management Services) Regulations 2006, SI 2006/3322, reg 21B(1)(a), (4), (5) (added by SI 2008/1441).

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568. Rules and code of practice.

The Regulator must prescribe, in writing, rules for the professional conduct of authorised persons¹. The rules may make provision that applies generally, or only in specified cases or circumstances; may make different provision for different cases or circumstances; and may include transitional, incidental or consequential provisions².

In particular, the rules may make provision regarding:

- 505 (1) the giving of notice to clients by an authorised person whose authorisation has been suspended or cancelled, or varied in such a way that the authorised person can no longer provide a regulated claims management service to one or more clients³;
- 506 (2) the accounting practices to be adopted by authorised persons who hold clients' money⁴; and
- 507 (3) the establishment and operation by authorised persons of schemes for the reception, investigation and rectification of complaints about their professional services⁵.

The Regulator may issue, by written instrument, a code of practice for the professional conduct of authorised persons or a specified class or group of authorised persons⁶. A code of practice may make provision that applies generally, or only in specified cases or circumstances; may make different provision for different cases or circumstances; and may include transitional, incidental or consequential provisions⁷.

The Regulator may amend or revoke rules or a code of practice⁸.

The Regulator may direct an authorised person who has failed to comply with the rules or a code of practice to make redress, in a specified way or form, to a person aggrieved by that failure⁹. The forms of redress may include, but are not limited to an apology; the re-doing, without charge to the aggrieved person, of work improperly done; or, in a case in which the failure consists of the charging of an unjustifiable fee¹⁰, the refund of all or part of the fee¹¹.

1 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 22(1). Before prescribing such rules, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such other organisations, as he considers appropriate: reg 22(2). The Regulator must not prescribe such rules unless the Secretary of State has approved a draft of the rules: reg 22(4). However reg 22(4) has no effect while the Secretary of State is exercising the functions of the Regulator: reg 22(5). The Regulator must publish the approved rules on his website and in printed form: s 22(6). Rules prescribed under reg 22(1) have effect only from the date on which they are published: reg 22(7). The Regulator may make a reasonable charge for supplying a printed copy of rules or a code of practice, or an instrument amending or revoking rules or a code of practice: reg 26. The Conduct of Authorised Persons Rules 2007 came into force as from 14 December 2006 and were amended on 9 May 2006. Pursuant to those rules the Claims Handling Rules 2006 were made on 6 April 2007.

2 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 22(3).

3 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 23(a).

4 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 23(b).

5 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 23(c).

6 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 24(1). Before issuing such a code, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such other organisations, as he considers appropriate: reg 24(3). The Regulator must not issue a code of practice unless the Secretary of State has approved a draft of the code: reg 24(4). However this has no effect while the Secretary of State is exercising the functions of the Regulator: reg 24(5). The Regulator must publish an approved code of practice on his website and in printed form: reg 24(6). A code of practice issued under reg 24(1) has effect only from the date on which it is published on the Regulator's website: reg 24(7).

7 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 24(2).

8 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 25(1). The procedure for amending or revoking rules or a code of practice is the same as the procedure for prescribing rules or issuing such a code: reg 25(2). Such an amendment or revocation may include transitional, incidental or consequential provisions: reg 25(3). An amendment or revocation of rules or a code of practice has effect only from the date on which the text of the amendment or revocation is published: reg 25(4). If the Regulator amends rules or a code of practice, the Regulator must, as soon as reasonably practicable, publish, in the ways set out in reg 22(6) or reg 24(6), as the case requires, the text of the rules or code as amended: reg 25(5).

9 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 27(1). Before giving such a direction, the Regulator:

408 (1) must notify the authorised person of the proposed direction, and the reasons for giving it (reg 27(4)(a));

409 (2) must give the authorised person a reasonable opportunity to make submissions in relation to the proposed direction (reg 27(4)(b)); and

410 (3) must take any such submission into account in deciding whether to give the direction (reg 27(4)(c)).

10 Such a fee is unjustifiable if it should not have been charged: Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 27(3).

11 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 27(2).

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Review by Regulator of complaint handling.

569. Review by Regulator of complaint handling.

If a client of an authorised person is dissatisfied with the handling by the authorised person of a complaint by the client, or an authorised person and a client cannot agree on how to resolve a complaint by the client that the authorised person has failed to comply with the rules or a code of practice, either the client or the authorised person may ask the Regulator to review the authorised person's handling of the complaint¹.

Where the Regulator is satisfied that a complaint against an authorised person is well founded or the authorised person should alter its claims management procedures the Regulator may give the authorised person a direction about the further handling of the complaint². The Regulator may also give the authorised person a direction about the future handling of complaints or about any other aspect of the authorised person's business that relates to the provision of claims management services³.

However, before giving a direction under the above provisions the Regulator must notify the authorised person of any direction that the Regulator proposes to give, and the reasons for giving it, give the authorised person a reasonable opportunity to make submissions in relation to the proposed direction and take any such submission into account in deciding whether to give the direction⁴.

1 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 28(1). For the purpose of such a review, the Regulator may direct the authorised person in writing to give the Regulator information or documents (being information or documents concerning either the handling of the complaint, or the conduct of the matter out of which the complaint arose) to the Regulator, and the authorised person must give the information or documents to the Regulator without delay: reg 28(2).

2 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 28(2).

3 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 28(3).

4 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 28(4).

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570. Regulator investigation of unprofessional conduct.

If a person complains to the Regulator about the professional conduct of an authorised person, the Regulator may investigate the complaint¹. The Regulator may also investigate the professional conduct of an authorised person if the Regulator is satisfied, otherwise than as a result of a complaint, that there are reasonable grounds to suspect that the authorised person has failed to comply with a condition of authorisation and the alleged or suspected breach is serious enough to justify investigation².

In making the decision whether or not to investigate, the Regulator must take into account:

- 508 (1) the source of any allegation made against the authorised person and whether the allegation is credible³;
- 509 (2) if the grounds for the suspicion are not an allegation or allegations against the person, what those grounds are and the credibility of their source⁴;
- 510 (3) whether the person also engages in another business activity and, if so, what that activity is and its relationship to the business of the provision of claims management services⁵;
- 511 (4) whether there have been other credible allegations against, or suspicions about, the person of failure to comply with a condition of authorisation⁶;
- 512 (5) anything in the Regulator's records about the person that is relevant to the person's conduct as an authorised person, including, in particular, the person's application to become an authorised person, any statements by the person to the effect that he has complied with conditions of the authorisation⁷, any audit and inspection reports held by the Regulator and any previous allegations against, or suspicions about, the person that the Regulator reasonably considers to have been well founded, even if no action was taken against the person⁸;
- 513 (6) any report in the media⁹;
- 514 (7) any advertising by the person¹⁰; and
- 515 (8) any other publicly available information about the person¹¹.

For the purpose of making a decision whether or not to investigate¹² the Regulator may require¹³ an authorised person to give the Regulator relevant information or documents and in making the decision whether or not to investigate the Regulator must take into account any information or documents so provided¹⁴. The Regulator may apply to a judicial officer for a search warrant to authorise a search of premises if the Regulator is satisfied, on the basis of information available to the Regulator as a result of the request for such information or documents¹⁵, that an authorised person has failed to comply with a condition of authorisation and information or documents relevant, and of substantial value, to the investigation of the apparent failure are likely to be found at the premises¹⁶.

1 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(1).

2 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(2).

3 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(a).

4 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(b).

- 5 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(c).
- 6 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(d).
- 7 The statements under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 12(5)(f) (see PARA 566).
- 8 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(e).
- 9 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(f).
- 10 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(g).
- 11 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35(3)(h).
- 12 The for the purpose of making a decision under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 35.
- 13 The requirement must be by notice in writing: Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 36(2). Such a notice must specify or describe the information or documents to be given to the Regulator and must specify the place at which, and the period within which, the information or documents are to be given to the Regulator and may specify the form in which the information or a document is to be given: reg 36(3). If such a notice specifies that information or a document is to be given in a particular form, it has not been complied with until the information or document is given in that form: reg 36(4). The period specified must be a period that is, in all the circumstances, reasonable: reg 36(5). The Regulator may allow more time for the information or documents to be provided if the person required to give the information or documents so requests in writing and the Regulator is satisfied that, in the circumstances, it is reasonable to allow the extra time: reg 36(6). Nothing in reg 36 authorises a search of any premises: reg 36(7). As to search warrants see reg 37; and PARA 571.
- 14 See the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, regs 35(3)(i), 36(1).
- 15 The information or documents under the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 36.
- 16 Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 37(1).

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571. Application for a search warrant.

On an application by the Regulator a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising the Regulator to enter and search premises on which a person conducts or is alleged to conduct regulated claims management business, for the purposes of investigating whether an offence has been committed¹.

The Regulator may also apply to a judicial officer for a search warrant to authorise a search of premises if the Regulator is satisfied, on the basis of information available to the Regulator as a result of a request for information or documents² that an authorised person has failed to comply with a condition of authorisation and information or documents relevant, and of substantial value, to the investigation of the apparent failure are likely to be found at the premises³.

The Regulator may apply to a judicial officer for a search warrant to authorise a search of premises if there is reason to believe that an authorised person has failed to comply with a condition of authorisation and information or documents relevant, and of substantial value, to the investigation of the apparent failure are likely to be found at the premises and either:

- 516 (1) the Regulator has required the authorised person to give the Regulator the information or documents⁴ and the authorised person has not done so within the period permitted by the requirement⁵; or
- 517 (2) there is reason to believe that if the Regulator required the authorised person to give the information or documents⁶, documents relevant to the investigation of the apparent failure would be removed, tampered with or destroyed⁷.

A judicial officer must not issue a search warrant to investigate professional conduct⁸ unless he is satisfied that the warrant is for the purpose of investigating a complaint about the activities of an authorised person or assessing compliance with a condition or conditions of an authorisation⁹.

1 Compensation Act 2006 s 8(5)(a) (renumbered by the Legal Services Act 2007 Sch 19 paras 1, 6(1), (2) (a)). The Regulator may take copies of written or electronic records found on such a search and, for that purpose he may take possession of any written or electronic records found on the search: Compensation Act 2006 s 8(5)(b), (6) (s 8(5)(b) added by the Legal Services Act 2007 Sch 19 paras 1, 6(1), (2)(b)). The Secretary of State must make regulations specifying matters of which a judge or justice of the peace must be satisfied, or to which he must have regard, before issuing a warrant under s 8(5), and regulating the exercise of a power under or by virtue of s 8(4) or (5), whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise: s 8(8). As from a day to be appointed the Secretary of State may not make regulations under s 8(8) unless they are made in accordance with a recommendation made by the Legal Services Board or the Secretary of State has consulted the Legal Services Board about the making of the regulations: s 8(9) (prospectively added by the Legal Services Act 2007 Sch 19 paras 1, 6(1), (3)). However the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, have already been made.

A person commits an offence if without reasonable excuse he obstructs the Regulator in the exercise of a power under the Compensation Act 2006 s 8(4)-(6), or by virtue of Schedule para 14, and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: s 10.

For the purposes of s 8(8), the matters of which a judicial officer must be satisfied when considering an application under s 8(5) are that there is reason to believe that information or documents relevant, and of

substantial value, to the investigation of an alleged or suspected contravention of s 4(1) are likely to be found at the premises concerned and the following apply in the particular case:

- 411 (1) there is reason to believe that if the Regulator were to require, under reg 33, to be given the information or documents, the information or documents would be removed, tampered with or destroyed (Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 34(1), (2));
- 412 (2) the person has been required to give information or documents to the Regulator under reg 33, and has not done so within the period permitted by the requirement (reg 34(1), (3));
- 413 (3) there is reason to believe, on the basis of information or documents provided to the Regulator in answer to a requirement under reg 33, that further investigation is justified of the alleged or suspected contravention in relation to which the requirement was made, there are further documents relevant to the investigation and if the Regulator were to require, under reg 33, to be given the further documents, they would be removed, tampered with or destroyed (reg 34(1), (5)).

An application for a search warrant in relation to which head (2) applies must set out the steps taken to require the person to provide information or documents under reg 33, and the person's response, if any (reg 34(4)). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37: see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164; and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 144.

2 le as a result of a request for information or documents under the Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 36 (see PARA 570).

3 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 37(1).

4 le information or documents under the Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 36 (see PARA 570).

5 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 37(2), (3). An application for a search warrant in relation to which reg 37(3) applies must set out the steps taken to require the person to provide information or documents under reg 36, and the person's response, if any: reg 37(4).

6 le information or documents under the Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 36 (see PARA 570).

7 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 37(5).

8 le a search warrant issued under the Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 37.

9 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 37(6).

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572. Search warrants generally.

A judicial officer may, on application by the Regulator¹, issue a warrant² authorising an officer of the Regulator to enter and search premises³. An application for a warrant must state that no judicial officer has refused to issue a warrant based on another application that is in substance the same⁴ and a judicial officer must not issue a warrant in response to an application unless he is satisfied that no judicial officer has refused to issue a warrant based on another application that is in substance the same⁵.

Any officer of the Regulator who is authorised to execute search warrants may execute a warrant to enter and search premises⁶. Entry and search under a warrant must be within three months from the date of its issue and must be at a reasonable hour⁷. A warrant authorises a search of premises only to the extent required for the purpose for which the warrant was issued and for entry on only one occasion⁸.

If the occupier of premises which are to be entered and searched is present when an officer of the Regulator seeks to execute a warrant to enter and search them, the officer must identify himself to the occupier and show the occupier documentary evidence that he is an officer of the Regulator, show the warrant to the occupier and give the occupier a copy of it⁹.

The officer of the Regulator who executes a warrant may take a copy of any record for which the warrant authorises a search and may require any information that is stored in electronic form, and is accessible from the premises, to be produced in a form in which it can be copied and in which it is visible and legible, or from which it can be produced in a visible and legible form, if he has reasonable grounds for believing that it is a record for which the warrant authorises a search¹⁰.

1 If the Regulator applies for a warrant (whether the application is made under Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, Pt 9 (ie regs 31-45) or under the Compensation Act 2006 s 8(5)) he must:

414 (1) state in the application:

5. (a) the ground on which he makes the application;

6. (b) whether the application is made under Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, Pt 9 (ie regs 31-45) or under the Compensation Act 2006 s 8(5); and

415 (2) specify in the application:

7. (a) each set of premises which it is desired to enter and search; and

8. (b) so far as is practicable, the material to be sought (Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 39(2)).

An application is to be made ex parte and supported by information in writing: reg 39(3). When applying for a warrant, the Regulator must have regard as far as possible to the relevant provisions of any code issued under the Police and Criminal Evidence Act 1984 s 66 in relation to searches of premises: Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 39(4).

2 A warrant:

- 416 (1) must set out the name of the officer of the Regulator who applied for it and the date on which it was issued (Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 41(1)(a));
- 417 (2) must specify each set of premises to be searched (reg 41(1)(b));
- 418 (3) must specify, so far as is practicable, the material sought (reg 41(1)(c)); and
- 419 (4) must state that it was issued under the Compensation Act 2006 s 8(5) (see PARA 571) or the Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 40, as the case may be (reg 41(1)(d)).

The appropriate number of copies of the warrant must be made which, in the case of a warrant that specifies only one set of premises, is two and, in the case of a warrant that specifies two or more sets of premises, is one more than the number of sets of premises specified: reg 41(2), (3). The copies must be clearly certified as copies: reg 41(4).

3 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 40(1). Such a warrant may be issued if the judicial officer is satisfied:

- 420 (1) that a ground specified in reg 34 (see PARA 571) or reg 37 (see PARA 571), as the case requires, for application for the issue of a warrant has been made out (reg 40(1)(a));
- 421 (2) that the material to be sought does not consist of or include items subject to legal privilege, excluded material or special procedure material (reg 40(1)(b)); and
- 422 (3) that at least one of the conditions set out below applies in relation to each set of premises (reg 40(1)(c)).

The conditions referred to in head (2) are:

- 423 (a) that it is not practicable to communicate with any person entitled to grant entry to the premises (reg 40(2)(a));
- 424 (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with any person entitled to grant access to the material (reg 40(2)(b));
- 425 (c) that entry to the premises will not be granted unless a warrant is produced (reg 40(2)(c));
- 426 (d) that the purpose of a search may be frustrated or seriously prejudiced unless an officer of the Regulator arriving at the premises can secure immediate entry to them (reg 40(2)(d)).

A judicial officer may, on application by the Regulator, authorise an officer of the Regulator to take possession of any written or electronic records for which a search has been authorised under reg 40(1) if the officer has reasonable grounds for believing that:

- 427 (i) those records have been obtained in consequence of, or are evidence in relation to a contravention of the Compensation Act 2006 s 4(1) (see PARA 553) or non-compliance with a condition of authorisation (Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 40(4), (5)(a) (added by SI 2008/1441));
- 428 (ii) it is necessary to take copies of those records (Claims Management Service) Regulations 2006, SI 2006/3322, reg 40(4), (5)(b) (as so added));
- 429 (iii) it is necessary to take possession of those records to take copies of them (reg 40(4), (5)(c) (as so added)).

4 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 39(1).

5 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 40(3).

6 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 42(1). When executing a warrant, an officer of the Regulator must have regard as far as possible to the relevant provisions of any code issued under the Police and Criminal Evidence Act 1984 s 66 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 856) in relation to searches of premises: reg 42(6).

7 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 42(2), (3).

8 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 42(4), (5). The officer of the Regulator who executes a warrant must make an endorsement on it stating whether any of the material sought was found, whether anything was copied, whether possession has been taken of any written or electronic records and whether possession was taken of any written or electronic records additional to those sought: reg 42(10) (amended by SI 2008/1441). In the case of a warrant that authorises entry to and search of two or more sets of premises, the officer of the Regulator who executes the warrant must make a separate endorsement in accordance with Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 42(10) for each set of premises entered and searched and must specify in each endorsement the premises to which it relates: reg 42(11).

9 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 42(7). If the occupier of such premises is not present when an officer of the Regulator seeks to execute a warrant, but a person who appears to the officer to be in charge of the premises is present, reg 42(7) has effect as if each reference to the occupier were a reference to that other person: reg 42(8). If there is no person present at the premises who appears to the officer of the Regulator to be in charge of them, the officer must leave a copy of the warrant in a prominent place on the premises: reg 42(9).

10 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 43(1), (2). However, nothing in reg 43 authorises an officer of the Regulator to take a copy of anything that the officer has reasonable grounds for believing to be an item subject to legal privilege, excluded material or special procedure material: reg 43(3). Where an officer has taken possession of electronic records pursuant to reg 40(4) that officer may produce records from it in a form that can be copied and is visible and legible, if that officer has reasonable grounds for believing that those records are records for which the warrant authorises a search: reg 43(2A) (added by SI 2008/1441). If an officer of the Regulator copies a record for which a warrant authorises a search and a person shows himself to be the occupier of premises on which the record was found or to have had custody or control of it and the person asks the officer to give him a record of what was copied, the officer must do so within a reasonable time: Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 44. Where an officer of the Regulator takes possession of any written or electronic records pursuant to reg 40(4) that officer must provide a list of those records to a person within the meaning of reg 44(b) within a reasonable time, take copies of those records as soon as possible and return those records to a person within the meaning of reg 44(b) once they have been copied: reg 44A (added by SI 2008/1441). A copy made of a record for which a search was authorised by a warrant may be retained for as long as is necessary in all the circumstances: Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 45(1). Without prejudice to the generality of reg 45(1), a copy made for the purposes of an investigation may be retained for use as evidence if the investigation is in relation to an offence, at a trial for the offence and if the investigation is in relation to an alleged or suspected failure to comply with a condition of authorisation, before the Tribunal in proceedings in relation to the failure: reg 45(2).

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573. Cancellation, suspension and variation of authorisations.

If, after investigation of an alleged or suspected failure by an authorised person to comply with a condition of authorisation, the Regulator is satisfied that the person has failed to comply with the condition and cancellation, suspension or variation of the person's authorisation is appropriate¹, the Regulator may cancel the authorisation, or suspend it for a period or vary the authorisation by limiting the classes of claims management services that the person may undertake or provide, or otherwise varying the conditions of the authorisation (including by imposing an additional condition)².

Before cancelling, suspending or varying an authorised person's authorisation, the Regulator must give written notice to the authorised person:

- 518 (1) stating that the Regulator proposes to cancel, suspend or vary the authorisation, as the case may be³;
- 519 (2) in the case of suspension or variation, setting out the terms of the proposed suspension or variation⁴;
- 520 (3) setting out the reasons for the Regulator's decision, and a summary of the evidence on which the Regulator relies⁵;
- 521 (4) inviting the person to make a written submission in relation to the proposed cancellation, suspension or variation⁶; and
- 522 (5) specifying a reasonable period within which the person must do so⁷.

Before cancelling, suspending or varying the authorisation, the Regulator must take into account any submission made by the authorised person within the period allowed (or any further period allowed by the Regulator)⁸.

1 The cancellation of, or the proposed suspension or variation of, the person's authorisation is appropriate for this purpose only if the nature and seriousness of the person's failure to comply with the condition is such that, to protect the public, it is necessary to cancel the authorisation, suspend it for the proposed period or vary it in the proposed way, as the case may be: Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(3).

2 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(1), (2).

3 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(4)(a).

4 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(4)(b).

5 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(4)(c).

6 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(4)(d).

7 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(4)(e).

8 Compensation (Claims Management Service) Regulations 2006, SI 2006/3322, reg 46(5). If the Regulator decides to cancel, suspend or vary an authorised person's authorisation, the Regulator must give written notice to the authorised person of the cancellation, suspension or variation: reg 47(1). The notice must specify a day as its earliest day of effect: reg 47(2). The notice may be served by post, but if so must be served by a method that provides a record of its delivery: reg 47(3). The cancellation, suspension or variation has effect from the later of the day specified in it as its earliest day of effect; and either, if it is sent by electronic communication,

the day it is taken to have been received under reg 5(2) (see PARA 564) or, if it is sent or served in any other way, the day it is actually received by the authorised person: reg 47(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(i) Claims Management Services/574. Enforcement.

574. Enforcement.

The Regulator may apply to the court¹ for an injunction restraining a person from providing regulated claims management services if he is not an authorised person, an exempt person², or the subject of a waiver³. The Regulator may investigate whether an offence has been committed⁴, and institute criminal proceedings in respect of an offence⁵.

1 le the High Court or a county court: Compensation Act 2006 s 8(2).

2 As to the meaning of 'authorised person' see PARA 553 note 2.

3 Compensation Act 2006 s 8(1). The waiver referred to in the text is a waiver in accordance with regulations under s 9 (see PARA 563).

4 For the purpose of investigating whether an offence has been committed the Regulator may require the provision of information or documents: Compensation Act 2006 s 8(4). For the purposes of s 8(4)-(6) a reference to a Regulator includes a reference to a person authorised by him in writing: s 8(7). Before requiring a person to provide information or documents for the purpose of investigating whether a person has contravened s 4(1) the Regulator must consider whether investigation is justified: Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 32(1). If an allegation of such a contravention has been made, the Regulator must consider whether the allegation is on its face credible and, taken with any information offered by the complainant in support of it, is sufficiently detailed and specific for an investigation to be practicable: reg 32(2). In all cases the Regulator must take into account:

430 (1) if the person alleged or suspected to have contravened the Compensation Act 2006 s 4(1) has applied for an authorisation under s 5(1)(a), or has sought exemption under s 6, the application or request, its result and anything else in the Regulator's records about it (Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 32(3)(a)); and

431 (2) anything else in the Regulator's records that is relevant (for example, anything that tends to establish a pattern of allegations against, or apparent contraventions by, the person) (reg 32(3)(b)).

For the purposes of head (1) the Regulator may consider material in, or the result of, an application or a request for exemption even if the application was for authorisation to provide, or the exemption was sought in relation to, another kind of regulated claims management service than that in relation to which the contravention is alleged or suspected to have occurred: reg 32(4).

The Regulator may require a person to give the Regulator information or documents for the purpose of investigating an alleged or suspected contravention of the Compensation Act 2006 s 4(1) if the person is the person alleged to have, or suspected of having, contravened s 4(1) or is otherwise likely to be able to provide information relevant to the investigation of the alleged or suspected contravention: Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, reg 33(1). Such a requirement must be by notice in writing: reg 33(2). Such a notice must specify or describe the information or documents that are to be given to the Regulator, the place at which, and the period within which, the information or documents are to be given to the Regulator and may specify the form in which the information or a document is to be given: reg 33(3). If such a notice specifies that information or a document is to be given in a particular form, the notice has not been complied with until the information or document is given in that form: reg 33(4). The period specified must be a period that is, in all the circumstances, reasonable: reg 33(5). The Regulator may allow more time for the giving of the information or documents if the person required to give the information or documents so requests in writing and the Regulator is satisfied that, because of exceptional circumstances, it is reasonable to allow the extra time: reg 33(6). Nothing in the Compensation (Claims Management Services) Regulations 2006, SI 2006/3322, authorises a search of any premises: reg 33(7).

5 Compensation Act 2006 s 8(3).

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575. Claims Management Services Tribunal.

There is to be a tribunal to be known as the Claims Management Services Tribunal¹. A person may appeal to the Tribunal if the Regulator:

- 523 (1) refuses the person's application for authorisation²;
- 524 (2) grants the person authorisation on terms or subject to conditions³;
- 525 (3) imposes conditions on the person's authorisation⁴;
- 526 (4) suspends the person's authorisation⁵; or
- 527 (5) cancels the person's authorisation⁶.

The Regulator may refer to the Tribunal, with or without findings of fact or recommendations, a complaint about the professional conduct of an authorised person, or the question whether an authorised person has complied with a rule of professional conduct⁷. On a reference or appeal the Tribunal:

- 528 (a) may take any decision on an application for authorisation that the Regulator could have taken⁸;
- 529 (b) may impose or remove conditions on a person's authorisation⁹;
- 530 (c) may suspend a person's authorisation¹⁰;
- 531 (d) may cancel a person's authorisation¹¹;
- 532 (e) may remit a matter to the Regulator¹²;
- 533 (f) may not award costs¹³.

An appeal or reference to the Tribunal must be heard by a member of the panel of chairmen selected in accordance with arrangements made by the President and sitting alone or, in accordance with those arrangements, with one or two members of the lay panel; and a chairman who sits with one other member must have a casting vote¹⁴.

An authorised person may appeal to the Court of Appeal on a point of law arising from a decision of the Tribunal¹⁵.

1 Compensation Act 2006 s 12(1). The Tribunal must be constituted as follows:

- 432 (1) members of the Financial Services and Markets Tribunal must also be members of the Claims Management Services Tribunal (s 12(2)(a));
- 433 (2) the President of the Financial Services and Markets Tribunal must also act as President of the Claims Management Services Tribunal (s 12(2)(b));
- 434 (3) the Deputy President of the Financial Services and Markets Tribunal must also act as Deputy President of the Claims Management Services Tribunal (s 12(2)(c)); and
- 435 (4) the panel of chairmen of the Financial Services and Markets Tribunal must also be the panel of chairmen of the Claims Management Services Tribunal (s 12(2)(d)).

As to the Financial Services and Markets Tribunal see the **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 43 et seq. As to the proceedings of the Tribunal see PARA 576. The Financial Services and Markets Act 2000 Sch 13 paras 5, 6, 7(3), (4), 8, 10, 11, 12(1)-(3) have effect, with any necessary modifications, in relation to the Claims Management Services Tribunal: Compensation Act 2006 s 12(5).

- 2 Compensation Act 2006 s 13(1)(a).
- 3 Compensation Act 2006 s 13(1)(b).
- 4 Compensation Act 2006 s 13(1)(c).
- 5 Compensation Act 2006 s 13(1)(d).
- 6 Compensation Act 2006 s 13(1)(e).
- 7 Compensation Act 2006 s 13(2).
- 8 Compensation Act 2006 s 13(3)(a).
- 9 Compensation Act 2006 s 13(3)(b).
- 10 Compensation Act 2006 s 13(3)(c).
- 11 Compensation Act 2006 s 13(3)(d).
- 12 Compensation Act 2006 s 13(3)(e).
- 13 Compensation Act 2006 s 13(3)(f).
- 14 Compensation Act 2006 s 12(3).
- 15 Compensation Act 2006 s 13(4) (amended by the Legal Services Act 2007 Sch 19 paras 1, 9).

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576. Proceedings of the Tribunal.

The Lord Chancellor may make rules about the proceedings of the Claims Management Services Tribunal¹; and the rules:

- 534 (1) must include provision about timing of references and appeals²;
- 535 (2) must include provision for the suspension of decisions of the Regulator while an appeal could be brought or is pending³;
- 536 (3) must include provision about the making of interim orders⁴;
- 537 (4) must enable the Tribunal to suspend or further suspend (wholly or partly) the effect of a decision of the Regulator⁵;
- 538 (5) must permit the Regulator to apply for the termination of the suspension of a decision of his⁶;
- 539 (6) may include provision about evidence⁷;
- 540 (7) may include provision about any other matter of a kind for which rules relating to the proceedings before the Financial Services and Markets Tribunal⁸ may make provision⁹;
- 541 (8) may include transitional, consequential or incidental provision¹⁰;
- 542 (9) may make provision generally or only for specified cases or circumstances¹¹;
- 543 (10) may make different provision for different cases or circumstances¹²;
- 544 (11) must be made by statutory instrument¹³; and
- 545 (12) must be subject to annulment in pursuance of a resolution of either House of Parliament¹⁴.

1 The Claims Management Services Tribunal Rules 2007, SI 2007/90, make provision for the procedure for all appeals to the Claims Management Services Tribunal: r 3.

2 Compensation Act 2006 s 12(4)(a). An appeal to the Tribunal is to be made by way of written notice (the 'appeal notice') containing information relating to the appeal and the appellant and may be withdrawn by the appellant at any time before the hearing or with the Tribunal's permission: see the Claims Management Services Tribunal Rules 2007, SI 2007/90, rr 4, 13, 22. The Regulator must file a written statement (a 'statement of case') in support of his decision and the appellant must file a written reply: see rr 5, 6, 19. Following the filing of the appellant's reply the Regulator may disclose further material: see r 7. The statement of case, the written reply and the further disclosure of material must all be accompanied by a list of relevant documents and, on request, provide a copy of the list to the other party: see rr 5(4)(a), 6(3), 7(1), 9. However there are exceptions to disclosure under those provisions: see r 8. A pre-hearing review may be held when appropriate: see r 11. The Tribunal may at any time give directions which may include directions fixing the time and place of the hearing of the appeal and varying any time limit: see rr 10, 12, 14-16. The Tribunal may, on the application of the appellant, direct that the effect of an effective decision is suspended or further suspended, wholly or partly: see r 17. The Tribunal may terminate the suspension of any decision: see r 18. A preliminary hearing may be held: see r 21. All hearings must be in public; however, on the agreement of the parties, the Tribunal may determine an appeal without an oral hearing: see rr 23, 24. The parties may appear at the hearing and be represented by any person unless the Tribunal is satisfied that there are good and sufficient reasons for refusing to permit them to assist or represent a party: see r 25. As to the procedure at hearings see r 26. Generally the Tribunal must make arrangements for public access to its decision: see r 27. If the tribunal is satisfied that its decision was wrongly made as a result of an error, new evidence has become available or there is good reason the Tribunal may review and set aside its decision: see r 28. An appeal may be made to the Court of Appeal which may remit an appeal to the Tribunal for rehearing and determination: see rr 29-31. A register is to be kept of appeals to, and decisions of the Tribunal: see r 32. Where a party fails to comply with the Claims Management Services Tribunal Rules 2007, SI 2007/90, or a direction given under them, the Tribunal may dismiss the whole or part of the appeal or strike out the whole or part of the statement of claim depending on whether the party failing to comply is the Regulator of the appellant: see r 34. As to general provisions relating to the Tribunal see rr 32-38.

3 Compensation Act 2006 s 12(4)(b).

4 Compensation Act 2006 s 12(4)(c).

5 Compensation Act 2006 s 12(4)(d).

6 Compensation Act 2006 s 12(4)(e).

7 Compensation Act 2006 s 12(4)(f).

8 le rules under the Financial Services and Markets Act 2000 s 132 (see **FINANCIAL SERVICES AND INSTITUTIONS**
vol 48 (2005) PARA 45).

9 Compensation Act 2006 s 12(4)(g).

10 Compensation Act 2006 s 12(4)(h).

11 Compensation Act 2006 s 12(4)(i).

12 Compensation Act 2006 s 12(4)(j).

13 Compensation Act 2006 s 12(4)(k).

14 Compensation Act 2006 s 12(4)(l).

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(ii) Commissioners for Oaths

577. Commissioners for oaths.

A commissioner for oaths can administer oaths or take affidavits¹. Until a day to be appointed² the following have the powers conferred on a commissioner for oaths and can use the title 'commissioner for oaths'³:

- 546 (1) every solicitor who holds a practising certificate⁴;
- 547 (2) any authorised advocate or authorised litigator, other than one who is a solicitor⁵;
- 548 (3) every general notary⁶;
- 549 (4) every licensed conveyancer⁷;
- 550 (5) a member of the Institute of Legal Executives⁸;
- 551 (6) every authorised person⁹.

As from a day to be appointed¹⁰, 'commissioner for oaths' includes an authorised person¹¹ in relation to the administration of oaths¹² and that person may use the title 'commissioner for oaths'¹³.

1 See the Commissioner for Oaths Act 1889 s 1(2); and **CIVIL PROCEDURE** vol 11 (2009) PARA 1026. As to the administration of oaths and affidavits see **CIVIL PROCEDURE** vol 11 (2009) PARAS 1021, 1023. However until a day to be appointed, a solicitor (or as from a day to be appointed a person) with an interest in the proceedings must not exercise this power: see the Commissioner for Oaths Act 1889 s 1(3); and **CIVIL PROCEDURE** vol 11 (2009) PARA 1026.

2 The Courts and Legal Services Act 1990 s 113 is repealed by the Legal Services Act 2007 Sch 21 para 96, Sch 23 and the Solicitors Act 1974 s 81 is repealed by the Legal Services Act 2007 Sch 16 para 73, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such days had been appointed.

3 See the Courts and Legal Services Act 1990 s 113(10) (prospectively repealed: see note 2); PARAS 736, 1460; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1026. As to other persons who can administer oaths and affidavits see **CIVIL PROCEDURE** vol 11 (2009) PARA 1026. As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

4 See the Solicitors Act 1974 s 81 (prospectively repealed); the Solicitors' Code of Conduct 2007 r 10.03; and PARAS 736, 871. As to the holding of a practising certificate see PARA 667 et seq.

5 See the Courts and Legal Services Act 1990 s 113(1), (3) (prospectively repealed: see note 2); and **CIVIL PROCEDURE** vol 11 (2009) PARA 1026.

6 See the Courts and Legal Services Act 1990 s 113(4) (prospectively repealed: see note 2); PARA 1460; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1026. For this purpose 'general notary' means any public notary other than an ecclesiastical notary: s 113(1).

7 See the Courts and Legal Services Act 1990 s 113(1)(b) (prospectively repealed: see note 2); the Commissioner for Oaths (Prescribed Bodies) Regulations 1994, SI 1994/1380, reg 3; PARA 1410; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1026. As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11; and PARA 1319 note 3 (definition applied by the Commissioner for Oaths (Prescribed Bodies) Regulations 1994, SI 1994/1380, reg 2). As to licensed conveyancers generally see PARA 1319 et seq.

8 See the Courts and Legal Services Act 1990 s 113(1)(b) (prospectively repealed: see note 2); the Commissioner for Oaths (Prescribed Bodies) Regulations 1995, SI 1995/1676, reg 2; and **CIVIL PROCEDURE** vol 11 (2009) PARA 1026. As to members of the Institute of Legal Executives see PARA 1463. As to the meaning of 'member' see PARA 351 note 3.

9 See the Courts and Legal Services Act s 113(10) (prospectively repealed: see note 2). For the purposes of s 113 'authorised person' means:

436 (1) any authorised advocate or authorised litigator, other than one who is a solicitor (s 113(1)(a) (as so prospectively repealed));

437 (2) any person who is a member of a professional or other body prescribed by the Secretary of State for the purposes of s 113 (s 113(1)(b) (amended by SI 2003/1887)).

As to the meaning of 'authorised litigator' see PARA 498 note 6. As to the meaning of 'authorised advocate' see PARA 497 note 7.

10 The Legal Services Act 2007 s 183 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

11 As to the meaning of 'authorised person' see PARA 515.

12 As to the meaning of 'administration of oaths' see PARA 512 note 8.

13 Legal Services Act 2007 s 183(1), (2). However a relevant authorised person may not carry on the administration of oaths in any proceedings in which that person represents any of the parties or is interested: s 183(3). The administration of oaths is a reserved legal activity for the purposes of the Legal Services Act 2007: see s 12; and PARA 512. As to when a person is exempt for the purposes of the administration of oaths see Sch 3 para 6; and PARA 522. As to bodies which are approved regulators in relation to the administration of oaths see PARAS 359-360. As to the meaning of 'approved regulator' see PARA 358.

UPDATE

577 Commissioners for oaths

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 4--Solicitors' Code of Conduct 2007 r 10.03 amended on 31 March 2009.

TEXT AND NOTE 10--Day appointed is 1 January 2010: SI 2009/3250.

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(iii) Patent Agents and Patent Attorneys

578. Patent agents and patent attorneys.

Until a day to be appointed¹ the Secretary of State may make rules requiring the keeping of a register of persons ('registered patent agents') who act for the purposes of applying for or obtaining patents². The register is kept by the Chartered Institute of Patent Attorneys³.

As from a day to be appointed the following provisions apply⁴. There is to continue to be a register of persons ('registered patent attorneys') who act as agent for others for the purpose of applying for or obtaining patents⁵. This register is kept by the Chartered Institute of Patent Attorneys⁶.

The Chartered Institute of Patent Attorneys is an approved regulator in relation to certain reserved legal activities⁷. Those activities are the exercise of a right of audience, the conduct of litigation, reserved instrument activities and the administration of oaths⁸. However, during a transitional period⁹:

- 552 (1) every registered patent attorney¹⁰ is deemed to be authorised by the Chartered Institute of Patent Attorneys to carry on reserved instrument activities¹¹;
 - 553 (2) every authorised patent attorney¹² is deemed to be authorised by the Chartered Institute of Patent Attorneys to administer oaths¹³; and
 - 554 (3) every patent attorney body¹⁴ is deemed to be authorised by the Chartered Institute of Patent Attorneys to carry on certain reserved legal activities¹⁵ which:
- 13
- 18. (a) if the body is a partnership, any partner who is a registered patent attorney is authorised to carry on¹⁶;
 - 19. (b) if the body is a body corporate, any director who is a registered patent attorney is authorised to carry on¹⁷.
- 14

1 The Copyright, Designs and Patents Act 1988 s 275 is substituted by the Legal Services Act 2007 s 185(1), (2) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 See the Copyright, Designs and Patents Act 1988 s 275; and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 620.

3 See the Register of Patent Agents Rules 1990, SI 1990/1457, r 3; and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 621. As to the Chartered Institute of Patent Attorneys see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 615.

4 See note 1. The Legal Services Act 2007 Sch 5 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

5 See the Copyright, Designs and Patents Act 1988 s 275(1), (2) (as prospectively substituted: see note 1); and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 620.

6 See the Copyright, Designs and Patents Act 1988 s 275(3) (as prospectively substituted: see note 1); and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 620.

7 See the Legal Services Act 2007 Sch 4 para 1(1); and PARA 359. As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'reserved legal activities' see PARA 512.

8 Legal Services Act 2007 Sch 4 para 1(2), table. As to the meanings of 'right of audience', 'conduct of litigation', 'reserved instrument activities' and 'administration of oaths' see PARA 512 notes 3-5, 8.

9 As to the meaning of 'transitional provision' see PARA 516 note 9.

10 'Registered patent attorney' has the meaning given by the Copyright, Designs and Patents Act 1988 s 275(2) (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 620): Legal Services Act 2007 Sch 5 para 14(7). During the transitional period registered patent attorneys are to continue to have the rights conferred by the Patents Act 1977 s 102A(2) and the Copyright, Designs and Patents Act 1988 s 292 (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 649): Legal Services Act 2007 Sch 5 para 15(1).

11 Legal Services Act 2007 Sch 5 para 14(1). The authority conferred by any of the Legal Services Act 2007 Sch 5 para 14(1)-(3) is exercisable in accordance with and subject to the regulatory arrangements of the Chartered Institute of Patent Attorneys: Sch 5 para 14(6).

12 'Authorised patent attorney' means a registered patent attorney who is authorised by the Chartered Institute of Patent Attorneys to carry on one or both of the following activities:

438 (1) the exercise of a right of audience (Legal Services Act 2007 Sch 5 para 14(7));

439 (2) the conduct of litigation (Sch 5 para 14(7)).

13 Legal Services Act 2007 Sch 5 para 14(2).

14 'Patent attorney body' means:

440 (1) a partnership all the partners of which are registered patent attorneys (Legal Services Act 2007 Sch 5 para 14(7));

441 (2) a body corporate all the directors of which are registered patent attorneys (Sch 5 para 14(7));

442 (3) a partnership or body corporate which satisfies the conditions prescribed under the Copyright, Designs and Patents Act 1988 s 279 (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 616) (Legal Services Act 2007 Sch 5 para 14(7)); or

443 (4) a body corporate to which the Copyright, Designs and Patents Act 1988 s 276(4) (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 615) applies (Legal Services Act 2007 Sch 5 para 14(7));

and, in the case of a patent attorney body to which the Copyright, Designs and Patents Act 1988 s 276(4) applies, the reference in s 276(4)(b) to a director includes a reference to the manager (within the meaning of s 276(4)) of the company: Legal Services Act 2007 Sch 5 para 14(7).

15 Those activities are:

444 (1) the exercise of a right of audience (Legal Services Act 2007 Sch 5 para 14(5)(a));

445 (2) the conduct of litigation (Sch 5 para 14(5)(b));

446 (3) reserved instrument activities (Sch 5 para 14(5)(c));

447 (4) the administration of oaths (Sch 5 para 14(5)(d)).

As to the meaning of 'reserved legal activities' see PARA 512.

16 Legal Services Act 2007 Sch 5 para 14(4)(a).

17 Legal Services Act 2007 Sch 5 para 14(4)(b).

UPDATE

578-579 Patent agents and patent attorneys, Trade mark agents and trade mark attorneys

Day appointed for purpose of these provisions is 1 January 2010: SI 2009/3250.

578 Patent agents and patent attorneys

NOTE 3--SI 1990/1457 revoked: SI 2009/3348.

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(iv) Trade Mark Agents and Trade Mark Attorneys

579. Trade mark agents and trade mark attorneys.

Until a day to be appointed¹ the Secretary of State may make rules requiring the keeping of a register of persons ('registered trade mark agents') who act as agent for others for the purpose of applying for or obtaining the registration of trade marks². The register is kept by the Institute of Trade Mark Attorneys³.

As from a day to be appointed the following provisions apply⁴. There is to continue to be a register of persons ('registered trade mark attorneys') who act as agent for others for the purpose of applying for or obtaining the registration of trade marks kept by the Institute of Trade Mark Attorneys⁵.

The Institute of Trade Mark Attorneys is an approved regulator in relation to certain reserved legal activities⁶. Those activities are the exercise of a right of audience, the conduct of litigation, reserved instrument activities and the administration of oaths⁷. However, during a transitional period⁸:

555 (1) every registered trade mark attorney⁹ is deemed to be authorised by the Institute of Trade Mark Attorneys to carry on reserved instrument activities¹⁰;

556 (2) every authorised trade mark attorney¹¹ is deemed to be authorised by the Institute of Trade Mark Attorneys to administer oaths¹²;

557 (3) every trade mark attorney body¹³ is deemed to be authorised by the Institute of Trade Mark Attorneys to carry on the certain reserved legal activities¹⁴ and which:

15

20. (a) if the body is a partnership, any partner who is a registered trade mark attorney is authorised to carry on¹⁵; or

21. (b) if the body is a body corporate, any director who is a registered trade mark attorney is authorised to carry on¹⁶.

16

1 The Trade Marks Act 1994 s 83 is substituted by the Legal Services Act 2007 s 184(1), (3) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 See the Trade Marks Act 1994 s 83; and **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 39.

3 See the Trade Mark Agents Rules 1990, SI 1990/1458, r 3; and **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 40.

4 See note 1. The Legal Services Act 2007 Sch 5 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

5 See the Trade Marks Act 1994 s 83(1)-(3) (as prospectively amended: see note 1); and **TRADE MARKS AND TRADE NAMES**.

6 See the Legal Services Act 2007 Sch 4 para 1(1); and PARA 359. As to the meaning of 'approved regulator' see para 358. As to the meaning of 'reserved legal activities' see para 512.

7 Legal Services Act 2007 Sch 4 para 1(2), table. As to the meanings of 'right of audience', 'conduct of litigation', 'reserved instrument activities' and 'administration of oaths' see PARA 512 notes 3-5, 8.

8 As to the meaning of 'transitional period' see PARA 516 note 9.

9 As to the meaning of 'registered trade mark attorney' see the Trade Marks Act 1994 s 83(2) (as prospectively substituted) (definition apply by the Legal Services Act 2007 Sch 5 para 16(7)).

10 Legal Services Act 2007 Sch 5 para 16(1).

11 'Authorised trade mark attorney' means a registered trade mark attorney who is authorised by the Institute of Trade Mark Attorneys to carry on one or both of the following activities:

448 (1) the exercise of a right of audience (Legal Services Act 2007 Sch 5 para 16(7));

449 (2) the conduct of litigation (Sch 5 para 16(7)).

12 Legal Services Act 2007 Sch 5 para 16(2).

13 'Trade mark attorney body' means:

450 (1) a partnership all the partners of which are registered trade mark attorneys (Legal Services Act 2007 Sch 5 para 16(7)(a));

451 (2) a body corporate all the directors of which are registered trade mark attorneys (Sch 5 para 16(7)(b)); or

452 (3) a partnership or body corporate which satisfies the conditions prescribed under the Trade Marks Act 1994 s 85 (see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 33) (Legal Services Act 2007 Sch 5 para 16(7)(c)).

14 Those activities are:

453 (1) the exercise of a right of audience (Legal Services Act 2007 Sch 5 para 16(5)(a));

454 (2) the conduct of litigation (Sch 5 para 16(5)(b));

455 (3) reserved instrument activities (Sch 5 para 16(5)(c));

456 (4) the administration of oaths (Sch 5 para 16(5)(d)).

15 Legal Services Act 2007 Sch 5 para 16(4)(a).

16 Legal Services Act 2007 Sch 5 para 16(4)(b).

UPDATE

578-579 Patent agents and patent attorneys, Trade mark agents and trade mark attorneys

Day appointed for purpose of these provisions is 1 January 2010: SI 2009/3250.

579 Trade mark agents and trade mark attorneys

NOTE 3--SI 1990/1458 revoked: SI 2009/3348.

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(v) Immigration Advisers and Immigration Services Providers

580. Immigration advisers and immigration services providers.

It is an offence for a person to provide immigration advice or immigration services unless he is qualified to do so¹. As from a day to be appointed persons authorised by the Solicitors Regulation Authority², the Institute of Legal Executives³ or the Bar Standards Board⁴ are added to the list of persons so qualified⁵.

1 See the Immigration and Asylum Act 1999 ss 84, 91; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 170. As to the registration of qualified persons see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 170.

2 The Immigration and Asylum Act 1999 s 86A (prospectively added) refers to the Law Society. However in practice the body that will be responsible is the Solicitors Regulation Authority: see PARA 619 et seq. As from a day to be appointed during the transitional period every qualified solicitor, registered foreign lawyer, registered European lawyer who is entitled to provide such services under his home professional title, legal partnership and a body recognised under the Administration of Justice Act 1985 s 9 (see PARA 688) is deemed to be authorised to provide immigration advice and immigration services subject to the Authority's regulatory arrangements: see the Legal Services Act 2007 Sch 18 paras 21, 22. 'Qualified lawyer' means a person who is qualified under the Solicitors Act 1974 s 1 (see PARA 635): Legal Services Act 2007 Sch 18 para 21(3). As to the meaning of 'registered foreign lawyer' see the Courts and Legal Services Act 1990 s 89; and PARA 628. As to the meaning of 'legal partnership' see Sch 5 para 7(4); and PARA 732 note 10. For the purpose of the Legal Services Act 2007 Sch 18 Pt 3 'transitional period' means the period which:

457 (1) begins with the day appointed for the coming into force of the Legal Services Act 2007 s 13 (see PARA 509) (entitlement to carry on reserved legal activities) (Sch 18 para 18(1)(a)); and

458 (2) ends with the day appointed by the Lord Chancellor by order for this purpose (Sch 18 para 18(1)(b)).

Different days may be appointed under head (1) for different purposes: Sch 18 para 18(2). An order may be made under head (1) only on the recommendation of the Legal Services Board: Sch 18 para 18(3). The Legal Services Act 2007 Sch 18 paras 18, 21, 22 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

3 As to the Institute of Legal Executives see PARA 1464 et seq. As from a day to be appointed, during the transitional period, a person authorised by the Institute of Legal Executives to practise as a member of the profession of legal executives and in possession of a valid certificate is deemed to be authorised by the Institute to provide immigration advice and immigration services in accordance with and subject to the regulatory arrangements of the Institute: see the Legal Services Act 2007 Sch 18 para 23. The Legal Services Act 2007 Sch 18 para 23 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

4 The Immigration and Asylum Act 1999 s 86A (prospectively added) refers to the General Council of the Bar. However in practice the body that will be responsible is the Bar Standards Board: see PARA 1049. As from a day to be appointed, during the transitional period, every barrister, and every registered European lawyer registered with the Bar Standards Board, is deemed to be authorised by the Council to provide immigration advice and immigration services in accordance with and subject to the regulatory arrangements of the Council: see the Legal Services Act 2007 Sch 18 paras 19, 20. The Legal Services Act 2007 Sch 18 paras 19, 20 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

5 See the Immigration and Asylum Act 1999 ss 84(2)(ba), 86A (not yet in force); and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**.

UPDATE

580 Immigration advisers and immigration services providers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 2--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(5) OTHER LEGAL SERVICE PROVIDERS/(vi) Law Costs Draftsmen/581. Law costs draftsmen.

(vi) Law Costs Draftsmen

581. Law costs draftsmen.

Until a day to be appointed¹ a person has the right of audience, the right to conduct litigation or the right to administer oaths if he has been granted that right by the Association of Law Costs Draftsmen².

As from a day to be appointed the following provisions apply³. The Association of Law Costs Draftsmen is an approved regulator in relation to certain reserved legal activities⁴. Those activities are the exercise of a right of audience, the conduct of litigation and the administration of oaths⁵. However during a transitional period⁶:

- 558 (1) every authorised member of the Association of Law Costs Draftsmen⁷ is deemed to be authorised by that Association to administer oaths⁸;
- 559 (2) a person 'P' is an exempt person in relation to the carrying on of an activity (the 'relevant activity') which is a particular reserved legal activity⁹ if:
- 17
22. (a) P carries on the relevant activity by virtue of an employee of P¹⁰ ('E') carrying it on in E's capacity as such an employee¹¹; and
23. (b) E is an authorised member of the Association of Law Costs Draftsmen¹².
- 18

1 The Courts and Legal Services Act 1990 ss 27, 28 are repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 83, 84(e), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 See the Courts and Legal Services Act 1990 ss 27, 28; Association of Law Costs Draftsman Order 2006, SI 2006/3333, art 3; and PARAS 497-498. The Council of the Association has passed byelaws and a Code of Conduct which are available on the website for the Association of Law Costs Draftsman.

3 The Legal Services Act 2007 Sch 5 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

4 See the Legal Services Act 2007 Sch 4 para 1(1); and PARA 359. As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'reserved legal activities' see PARA 512.

5 Legal Services Act 2007 Sch 4, para 1(2), table. As to the meaning of 'right of audience', 'conduct of litigation' and 'administration of oaths' see PARA 512 notes 3, 4, 8 respectively.

6 As to the meaning of 'transitional period' see PARA 516 note 9.

7 For these purposes 'authorised member of the Association of Law Costs Draftsmen' means a member of that Association who has been authorised by that Association to carry on one or both of the following activities:

459 (1) the exercise of a right of audience (Legal Services Act 2007 Sch 5 para 17(2)(a));

460 (2) the conduct of litigation (Sch 5 para 17(2)(b)).

8 Legal Services Act 2007 Sch 5 para 17(1). The authority conferred by Sch 5 para 17(1) is exercisable in accordance with and subject to the regulatory arrangements of the Association of Law Costs Draftsmen: Sch 5 para 17(3).

9 The reserved legal activities for this purpose are:

461 (1) the exercise of a right of audience (Legal Services Act 2007 Sch 5 para 18(2)(a));

462 (2) the conduct of litigation (Sch 5 para 18(2)(b));

463 (3) the administration of oaths (Sch 5 para 18(2)(c)).

10 If P is a body, references in the Legal Services Act 2007 Sch 5 para 18 to an employee of P include references to a manager of P: Sch 5 para 18(3). As to the meaning of 'manager' see PARA 369 note 17.

11 Legal Services Act 2007 Sch 5 para 18(1)(a).

12 Legal Services Act 2007 Sch 5 para 18(1)(b).

UPDATE

581 Law costs draftsmen

NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 21 para 83 is 31 March 2009 (SI 2009/503); day appointed in relation to Legal Services Act 2007 Sch 21 para 84(e) is 1 January 2010 (SI 2009/3250).

NOTE 3--Days appointed in relation to Legal Services Act 2007 Sch 5 are 31 March 2009 (SI 2009/503) and 1 January 2010 (SI 2009/3250).

NOTES 5-12--Legal Services Act 2007 Sch 4 para 1 (in part), Sch 5 paras 17 (in part), 18 (in part) in force 1 January 2010 (SI 2009/3250); Legal Services Act 2007 Sch 5 paras 17 (in part), 18 (in part) in force 31 March 2009 (SI 2009/503).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(i) In general/582. Judges etc barred from practice.

(6) OFFENCES AND RESTRICTION ON PRACTICE

(i) In general

582. Judges etc barred from practice.

A person holding as a full-time appointment any of certain judicial offices¹ may not:

- 560 (1) provide any advocacy or litigation services (in any jurisdiction)²;
- 561 (2) provide any conveyancing or probate services³;
- 562 (3) practise as a barrister, solicitor, public notary or licensed conveyancer, or be indirectly concerned in any such practice⁴;
- 563 (4) act for any remuneration to himself as an arbitrator or umpire⁵;
- 564 (5) as from a day to be appointed, carry on any notarial activities⁶.

¹ These offices are Lord of Appeal in Ordinary, Lord Justice of Appeal, Puisne judge of the High Court, Circuit judge, District judge (including district judge of the principal registry of the Family Division), Master of the Queen's Bench Division, Queen's Coroner and Attorney and Master of the Crown Office and Registrar of Criminal Appeals, Admiralty Registrar, Master of the Chancery Division, Registrar in Bankruptcy of the High Court, Taxing Master of the Supreme Court, Registrar of Civil Appeals, Senior Judge of the Court of Protection, President of the Court of Protection, Vice-President of the Court of Protection, District probate registrar, Judge Advocate General, Vice Judge Advocate General, Assistant Judge Advocate General, District Judge (Magistrates' Courts), Social Security Commissioner, President of social security appeal tribunals, medical appeal tribunals and disability appeal tribunals or regional or other full-time chairman of such tribunals, President of the Employment Tribunals (England and Wales) or member of a panel of chairmen established by regulations under the Employment Tribunals Act 1996 s 1(1) (see **EMPLOYMENT** vol 41 (2009) PARA 1363) for employment tribunals for England and Wales, President or other member of the Asylum and Immigration Tribunal, Member of the Lands Tribunal appointed under the Lands Tribunal Act 1949 s 2 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 720 et seq), President of Value Added Tax Tribunals or chairman of such a tribunal appointed under the Value Added Tax Act 1983 Sch 8, Special Commissioner appointed under the Taxes Management Act 1970 s 4 (see **INCOME TAXATION** vol 23(1) (Reissue) PARAS 39-41), Member of the Charity Commission appointed as provided in the Charities Act 1993 Sch 1A (see **CHARITIES** vol 8 (2010) PARA 538), Coroner appointed under the Coroners Act 1988 s 2 (see **CORONERS** vol 9(2) (2006 Reissue) PARAS 913-914), Member of a Pensions Appeal Tribunal, President of the Gambling Appeals Tribunal, President or other member of the Charity Tribunal; a Judge or other member of the First-tier Tribunal as appointed under the Tribunals, Courts and Enforcement Act 2007 Sch 2 para 1(1) or 2(1) or who is a transferred-in judge, or a transferred-in other member, of the First-tier Tribunal (see s 31(2)); a Judge or other member of the Upper Tribunal as appointed under Sch 3 para 1(1), or 2(1) or who is a transferred-in judge, or a transferred-in other member, of the Upper Tribunal (see s 31(2); Senior President of Tribunals; Chamber President, or Acting Chamber President or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal: Courts and Legal Services Act 1990 Sch 11 (amended by the Disability Living Allowance and Disability Working Allowance Act 1991 Sch 2 para 22; the Social Security (Consequential Provisions) Act 1992 Sch 1; the Employment Rights (Dispute Resolution) Act 1998 Sch 1 para 6; the Access to Justice Act 1999 Sch 11 para 37; the Immigration and Asylum Act 1999 Sch 14 para 19(1), (3); the Child Support, Pensions and Social Security Act 2000 s 60(5); the Armed Forces Act 2001 Sch 6 para 9, Sch 7, Pt 3; the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 6; the Gambling Act 2005 Sch 8 para 17; the Mental Capacity Act 2005 Sch 6 para 35(1), (2); the Charities Act 2006 Sch 3 para 4, Sch 8 para 86; and the Tribunals, Courts and Enforcement Act 2007 s 48(1), Sch 8 paras 14, 16). As from a day to be appointed the entry for Lord of Appeal in Ordinary is replaced by one for the Judge of the Supreme Court and the entry for Taxing Master of the Supreme Court is replaced by one for Taxing Master of the Senior Courts by the Constitutional Reform Act 2005 Sch 11 para 4(1), (3), Sch 17 para 24. At the date at which this volume states the law no such day had been appointed.

² Courts and Legal Services Act 1990 s 75(a). As to the meanings of 'advocacy services' and 'litigation services' see PARA 495 notes 3, 4.

3 Courts and Legal Services Act 1990 s 75(b). As to the meaning of 'conveyancing services' see PARA 495 note 5. As to the meaning of 'probate services' see PARA 427 note 5.

4 Courts and Legal Services Act 1990 s 75(c). As to the meaning of 'licensed conveyancer' see the Administration of Justice Act 1985 s 11; and PARA 1319 note 3 (definition applied by the Courts and Legal Services Act 1990 s 119(1)). As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

5 Courts and Legal Services Act 1990 s 75(e).

6 Courts and Legal Services Act 1990 s 75(ba) (prospectively added by the Legal Services Act 2007 Sch 21 paras 83, 95).

UPDATE

582 Judges etc barred from practice

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604. Reference to the President or other member of the Charity Tribunal omitted: Courts and Legal Services Act 1990 Sch 11 (amended by SI 2009/1834).

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583. Offences committed by bodies corporate and unincorporated bodies.

As from a day to be appointed the following provisions have effect¹. Where an offence committed under the Legal Services Act 2007 by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of an officer² of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly³. Where the affairs of a body corporate are managed by its members, this also applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate⁴.

Proceedings for an offence alleged to have been committed by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation⁵.

Where an offence committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, that officer or member as well as the unincorporated body is guilty of the offence and liable to be proceeded against and punished accordingly⁶.

Where an offence committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly⁷.

1 The Legal Services Act 2007 s 197 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 'Officer', in relation to a body corporate, means any director, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity: Legal Services Act 2007 s 197(8).

3 Legal Services Act 2007 s 197(1), (8).

4 Legal Services Act 2007 s 197(2).

5 Legal Services Act 2007 s 197(3). A fine imposed on an unincorporated body on its conviction of an offence is to be paid out of the funds of that body: s 197(4). If an unincorporated body is charged with an offence, the Criminal Justice Act 1925 s 33 and the Magistrates' Courts Act 1980 Sch 3 (procedure on charge of an offence against a corporation (see **MAGISTRATES** vol 29(2) (Reissue) PARA 666)) have effect in like manner as in the case of a corporation so charged: s 197(5). As to the meaning of 'court' see PARA 302 note 13.

6 Legal Services Act 2007 s 197(6).

7 Legal Services Act 2007 s 197(7).

UPDATE

583 Offences committed by bodies corporate and unincorporated bodies

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(ii) Person Not Entitled to Carry Out a Legal Activity/584. Acting in the purported exercise of rights of audience etc.

(ii) Person Not Entitled to Carry Out a Legal Activity

584. Acting in the purported exercise of rights of audience etc.

Until a day to be appointed the following provisions have effect¹. A person who does any act in the purported exercise of a right of audience² or right to conduct litigation³ in relation to any proceedings⁴ or contemplated proceedings when he is not entitled to exercise that right is guilty of an offence⁵ and liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum, or to both, or on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both⁶. A person guilty of such an offence is also guilty of contempt of the court⁷ concerned and may be punished accordingly⁸. Where an offence is committed by a body corporate, if it is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of any director, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, then he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly⁹.

1 The Courts and Legal Services Act 1990 s 70 is repealed by the Legal Services Act 2007 Sch 21 paras 83, 93, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'right of audience' see PARA 495 note 3.

3 As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

4 As to the meaning of 'proceedings' see PARA 495 note 3.

5 Courts and Legal Services Act 1990 s 70(1) (prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 s 70(4) (prospectively repealed: see note 1). As to the statutory maximum see PARA 553 note 6.

7 As to the meaning of 'court' see PARA 426 note 12.

8 Courts and Legal Services Act 1990 s 70(6) (prospectively repealed: see note 1). As to contempt see generally **CONTEMPT OF COURT**.

9 Courts and Legal Services Act 1990 s 70(7), (8) (prospectively repealed: see note 1).

UPDATE

584-586 Acting in the purported exercise of rights of audience etc ... Not entitled to carry on the activity

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(ii) Person Not Entitled to Carry Out a Legal Activity/585. Pretending to be entitled.

585. Pretending to be entitled.

Until a day to be appointed the following provisions have effect¹. If any person:

565 (1) wilfully pretends to be entitled to exercise any right of audience² or right to conduct litigation³ in relation to any proceedings⁴ or contemplated proceedings when he is not so entitled⁵; or

566 (2) with the intention of implying falsely that he is so entitled, takes or uses any name, title or description⁶,

he is guilty of an offence⁷ and liable on summary conviction to a fine not exceeding level 4 on the standard scale⁸.

As from a day to be appointed the following provisions apply⁹. It is an offence for a person wilfully to pretend to be entitled to carry on any activity which is a reserved legal activity¹⁰ when that person is not so entitled or, with the intention of implying falsely that that person is so entitled, to take or use any name, title or description¹¹.

1 The Courts and Legal Services Act 1990 s 70 is repealed by the Legal Services Act 2007 Sch 21 paras 83, 93, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'right of audience' see PARA 495 note 3.

3 As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

4 As to the meaning of 'proceedings' see PARA 495 note 3.

5 Courts and Legal Services Act 1990 s 70(3)(a)(i), (ii) (prospectively repealed: see note 1).

6 Courts and Legal Services Act 1990 s 70(3)(c) (prospectively repealed: see note 1).

7 Courts and Legal Services Act 1990 s 70(3) (prospectively repealed: see note 1).

8 Courts and Legal Services Act 1990 s 70(5) (prospectively repealed: see note 1). As to offences by bodies corporate see s 70(7), (8); and PARA 584. As to the standard scale see PARA 571 note 1.

9 The Legal Services Act 2007 s 17 to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

10 As to the meaning of 'reserved legal activity' see PARA 512.

11 Legal Services Act 2007 s 17(1). A person who is guilty of an offence under s 17(1) is liable, on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) and on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both): s 17(2). In relation to an offence under s 17(1) committed before the commencement of the Criminal Justice Act 2003 s 154(1), the reference to 12 months is to be read as a reference to six months: s 17(3). As to the statutory maximum see PARA 553 note 6.

UPDATE

584-586 Acting in the purported exercise of rights of audience etc ... Not entitled to carry on the activity

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(ii) Person Not Entitled to Carry Out a Legal Activity/586. Not entitled to carry on the activity.

586. Not entitled to carry on the activity.

Until a day to be appointed the following provision has effect¹. If any person does any act in the purported exercise of any right granted to authorised practitioners by virtue of the Courts and Legal Services Act 1990 when he is not an authorised practitioner he is guilty of an offence².

As from a day to be appointed the following provisions have effect³. It is an offence for a person to carry on an activity (the 'relevant activity') which is a reserved legal activity⁴ unless that person is entitled to carry on the relevant activity⁵. A person who is guilty of such an offence by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly⁶. It is a defence for the accused to show that the accused did not know, and could not reasonably have been expected to know, that the offence was being committed⁷.

1 The Courts and Legal Services Act 1990 s 70 is repealed by the Legal Services Act 2007 Sch 21 paras 83, 93, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 s 70(2) (prospectively repealed: see note 1). A person guilty of such an offence is liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum or to both or, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both: s 70(4) (as so prospectively repealed). As to the commission of the offence by a body corporate see s 70(8); and PARA 584. As to the statutory maximum see PARA 553 note 6. Certain activities may only be undertaken by a firm if the firm has a principal who is a solicitor, or who is a registered European lawyer or recognised body qualified to provide that service: see the Solicitors' Code of Conduct 2007 r 20.02. Rule 20 also applies to an overseas practice: see r 15.20.

3 The Legal Services Act 2007 ss 14, 198 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

4 As to the meaning of 'reserved legal activity' see PARA 512.

5 Legal Services Act 2007 s 14(1). A person who is guilty of an offence under s 14(1) is liable on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) and on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both): s 14(3). However in relation to an offence under s 14(1) committed before the commencement of the Criminal Justice Act 2003 s 154(1), the reference to 12 months is to be read as a reference to six months: Legal Services Act 2007 s 14(5). As to offences committed by bodies corporate and unincorporated bodies see s 197; and PARA 583. A local weights and measures authority may institute proceedings for an offence under s 14 if the activity which it is alleged that the accused was not entitled to carry on constitutes reserved instrument activities: s 198(1). A weights and measures officer who has reasonable cause to suspect that a relevant offence may have been committed may, at any reasonable time:

464 (1) enter any premises which are not used solely as a dwelling (s 198(4)(a));

465 (2) require any officer, agent or other competent person on the premises who is, or may be, in possession of information relevant to an investigation of the suspected offence to provide such information (s 198(4)(b));

466 (3) require the production of any document which may be relevant to such an investigation (s 198(4)(c));

467 (4) take copies, or extracts, of any such documents (s 198(4)(d));

- 468 (5) seize and retain any document which the weights and measures officer has reason to believe may be required as evidence in proceedings for a relevant offence (s 198(4)(e)).

'Relevant offence' means an offence in relation to which proceedings may be instituted by virtue of s 198(1) or (2) and 'weights and measures officer' means an officer of a local weights and measures authority who is authorised by the authority to exercise the powers conferred by s 198(4): s 198(3). Any person exercising a power given by s 198(4) must, if asked to do so, produce evidence that that person is a weights and measures officer: s 198(5). A justice of the peace may issue a warrant under this section if satisfied, on information on oath given by a weights and measures officer, that there is reasonable cause to believe that a relevant offence may have been committed and that:

- 469 (a) entry to the premises concerned, or production of any documents which may be relevant to an investigation of the relevant offence, has been or is likely to be refused to a weights and measures officer (s 198(6)(a)); or
- 470 (b) there is reasonable cause to believe that, if production of any such document were to be required by the weights and measures officer without a warrant having been issued under s 198, the document would not be produced but would be removed from the premises or hidden, tampered with or destroyed (s 198(6)(b)).

A warrant issued under s 198 must authorise the weights and measures officer accompanied, where that officer considers it appropriate, by a constable or other person to enter the premises specified in the information, using such force as is reasonably necessary and to exercise any of the powers given to the weights and measures officer by s 198(4): s 198(7). It is an offence for a person ('P'):

- 471 (i) intentionally to obstruct a weights and measures officer in the exercise of any power under s 198 (s 198(8)(a));
- 472 (ii) intentionally to fail to comply with any requirement properly imposed on P by a weights and measures officer in the exercise of any such power (s 198(8)(b));
- 473 (iii) to fail, without reasonable excuse, to give a weights and measures officer any assistance or information which the weights and measures officer may reasonably require of P for the purpose of exercising any such power (s 198(8)(c)); or
- 474 (iv) in giving to a weights and measures officer any information which P has been required to give a weights and measures officer exercising any such power, to make any statement which P knows to be false or misleading in a material particular (s 198(8)(d)).

A person who is guilty of an offence under s 198(8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 198(9). Nothing in s 198 is to be taken to require any person to answer any question put to that person by a weights and measures officer, or to give any information to such an officer, if to do so might incriminate that person: s 198(10). As to the standard scale see PARA 571 note 1.

6 Legal Services Act 2007 s 14(4). As to the meaning of 'court' see PARA 302 note 13.

7 Legal Services Act 2007 s 14(2).

UPDATE

584-586 Acting in the purported exercise of rights of audience etc ... Not entitled to carry on the activity

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

586 Not entitled to carry on the activity

NOTE 2--Solicitors' Code of Conduct 2007 r 15.20 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(ii) Person Not Entitled to Carry Out a Legal Activity/587. Carrying on reserved legal activity through a person not entitled.

587. Carrying on reserved legal activity through a person not entitled.

As from a day to be appointed the following provisions apply¹. It is an offence for a person ('P') to carry on an activity ('the relevant activity') which is a reserved legal activity², despite P being entitled to carry on the relevant activity³ if:

- 567 (1) P carries on the relevant activity by virtue of an employee of P ('E') carrying it on in E's capacity as such an employee⁴; and
- 568 (2) in carrying on the relevant activity, E commits an offence⁵ of not being entitled to carry on that activity⁶.

It is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence⁷.

1 The Legal Services Act 2007 ss 16, 198 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activity' see PARA 512. A person who is guilty of an offence under the Legal Services Act 2007 s 16(1) by reason of an act done in the purported exercise of a right of audience, or a right to conduct litigation, in relation to any proceedings or contemplated proceedings is also guilty of contempt of the court concerned and may be punished accordingly: s 16(6). As to the meaning of 'court' see PARA 302 note 13.

3 Legal Services Act 2007 s 16(1). A person who is guilty of an offence under s 16(1) is liable on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) and on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both): s 16(5). As to the statutory maximum see PARA 553 note 6. In relation to an offence under s 16(1) committed before the commencement of the Criminal Justice Act 2003 s 154(1), the reference to 12 months is to be read as a reference to six months: Legal Services Act 2007 s 16(7). As to offences committed by bodies corporate and unincorporated bodies see s 197; and PARA 583. A local weights and measures authority may institute proceedings for an offence under s 16 if the activity which it is alleged that E was not entitled to carry on constitutes reserved instrument activities: s 198(2). A weights and measures officer who has reasonable cause to suspect that a relevant offence may have been committed may, at any reasonable time:

- 475 (1) enter any premises which are not used solely as a dwelling (s 198(4)(a));
- 476 (2) require any officer, agent or other competent person on the premises who is, or may be, in possession of information relevant to an investigation of the suspected offence to provide such information (s 198(4)(b));
- 477 (3) require the production of any document which may be relevant to such an investigation (s 198(4)(c));
- 478 (4) take copies, or extracts, of any such documents (s 198(4)(d));
- 479 (5) seize and retain any document which the weights and measures officer has reason to believe may be required as evidence in proceedings for a relevant offence (s 198(4)(e)).

As to the meanings of 'relevant offence' and 'weights and measures officer' see PARA 586 note 3. Any person exercising a power given by s 198(4) must, if asked to do so, produce evidence that that person is a weights and measures officer: s 198(5). A justice of the peace may issue a warrant under this section if satisfied, on information on oath given by a weights and measures officer, that there is reasonable cause to believe that a relevant offence may have been committed and that:

- 480 (a) entry to the premises concerned, or production of any documents which may be relevant to an investigation of the relevant offence, has been or is likely to be refused to a weights and measures officer (s 198(6)(a)); or
- 481 (b) there is reasonable cause to believe that, if production of any such document were to be required by the weights and measures officer without a warrant having been issued under s 198, the document would not be produced but would be removed from the premises or hidden, tampered with or destroyed (s 198(6)(b)).

A warrant issued under s 198 must authorise the weights and measures officer accompanied, where that officer considers it appropriate, by a constable or other person to enter the premises specified in the information, using such force as is reasonably necessary and to exercise any of the powers given to the weights and measures officer by s 198(4): s 198(7). It is an offence for a person ('P'):

- 482 (i) intentionally to obstruct a weights and measures officer in the exercise of any power under s 198 (s 198(8)(a));
- 483 (ii) intentionally to fail to comply with any requirement properly imposed on P by a weights and measures officer in the exercise of any such power (s 198(8)(b));
- 484 (iii) to fail, without reasonable excuse, to give a weights and measures officer any assistance or information which the weights and measures officer may reasonably require of P for the purpose of exercising any such power (s 198(8)(c)); or
- 485 (iv) in giving to a weights and measures officer any information which P has been required to give a weights and measures officer exercising any such power, to make any statement which P knows to be false or misleading in a material particular (s 198(8)(d)).

A person who is guilty of an offence under s 198(8) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 198(9). Nothing in s 198 is to be taken to require any person to answer any question put to that person by a weights and measures officer, or to give any information to such an officer, if to do so might incriminate that person: s 198(10). As to the standard scale see PARA 571 note 1.

4 Legal Services Act 2007 s 16(2)(a). If P is a body, references in s 16(2) to an employee of P include references to a manager of P: s 16(3). As to the meaning of 'manager' see PARA 369 note 17.

5 It is an offence under the Legal Services Act 2007 s 14 (see PARA 586).

6 Legal Services Act 2007 s 16(2)(b).

7 Legal Services Act 2007 s 16(4).

UPDATE

587 Carrying on reserved legal activity through a person not entitled

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/A. PRETENDING TO BE A REGISTERED EUROPEAN LAWYER/588. Offence of pretending to be a registered European lawyer.

(iii) Unqualified Person Acting etc as Legal Practitioner

A. PRETENDING TO BE A REGISTERED EUROPEAN LAWYER

588. Offence of pretending to be a registered European lawyer.

A person who is not registered as a European lawyer¹ in any part of the United Kingdom (including a person whose registration has been suspended) and:

- 569 (1) wilfully pretends to be a registered European lawyer or takes or uses any name, title, designation or description implying that he is a registered European lawyer²; or
- 570 (2) carries on professional activities under one of the professional titles listed in the European Communities (Lawyer's Practice) Regulations 2000³ or under any name, designation or description implying that he is entitled to pursue those activities under one of those professional titles⁴,

is guilty of an offence⁵.

1 As to the meaning of 'European lawyer' see PARA 535. As to registration see PARA 542.

2 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 21(1)(a).

3 Ie under the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(4).

4 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 21(1)(b). Regulation 21(1)(b) must not apply to a person who satisfies any of the following conditions:

486 (1) he is not a national of the United Kingdom or of any of the states listed in reg 2(4) (see PARA 535) (reg 22(2)(a));

487 (2) he is a solicitor or barrister (reg 22(2)(b)); or

488 (3) he is providing services within the meaning of the European Communities (Services of Lawyers) Order 1978, SI 1978/1910 (see PARAS 536-540) at the time his activities fall within head (1) in the text (European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 21(2)(c)).

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 21(1). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale: reg 21(1). As to the standard scale see PARA 571 note 1.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/B. UNQUALIFIED PERSONS ACTING AS A SOLICITOR ETC/589. Unqualified person not to act as a solicitor.

B. UNQUALIFIED PERSONS ACTING AS A SOLICITOR ETC

589. Unqualified person not to act as a solicitor.

Until a day to be appointed the following provisions have effect¹. Subject to certain exceptions² no unqualified person³ may act as a solicitor⁴, or as such issue any writ or process, or commence, prosecute or defend any action, suit or other proceedings, in his own name or in the name of any other person, in any court of civil or criminal jurisdiction⁵; or act as a solicitor in any cause or matter, civil or criminal, to be heard or determined before any justice or justices or any commissioners of Her Majesty's revenue⁶.

Any person who contravenes this provision⁷ is guilty of an offence and liable on conviction on indictment to imprisonment for not more than two years or to a fine, or to both⁸, and is guilty of contempt of the court in which the action, suit, cause, matter or proceeding in relation to which he so acts is brought or taken⁹ and may be punished accordingly¹⁰.

As from a day to be appointed¹¹ no unqualified person is to act as a solicitor and any person who contravenes this provision is guilty of an offence and liable on conviction on indictment to imprisonment for not more than two years or to a fine or both¹².

1 The Courts and Legal Services Act 1990 s 20 is substituted by the Legal Services Act 2007 Sch 16 paras 1, 25 and the Courts and Legal Services Act 1990 s 27 is repealed by the Legal Services Act 1990 Sch 16 paras 1, 29, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Nothing in the Solicitors Act 1974 Pt I (ss 1-30) affects any enactment empowering an unqualified person to conduct, defend or otherwise act in relation to any legal proceedings: s 27 (prospectively repealed: see note 1). See PARA 642 note 12 where examples are given of enactments authorising unqualified persons so to act. Apart from this specific exception, a litigant has a general right to appear in person in any court and conduct his own case, although the right is not unqualified (eg certain proceedings may be brought only by the Attorney General or some other person or body): see PARA 1109 et seq. A prisoner under sentence has no right to be heard in person: *Re Wring, Re Cook* [1960] 1 All ER 536n, [1960] 1 WLR 138, DC. As to criminal proceedings see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 631 et seq; **MAGISTRATES** vol 29(2) (Reissue) PARA 752.

3 'Unqualified person' means a person who is not qualified under the Solicitors Act 1974 s 1 (see PARA 589 note 3) to act as a solicitor: s 87(1). References to unqualified persons and to persons include references to bodies corporate: Solicitors Act 1974 s 24(2). However, notwithstanding s 24(2), s 20 does not apply to a recognised body: Administration of Justice Act 1985 s 9(3). As to the meaning of 'recognised body' see PARA 687 note 3. As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

4 An unqualified person does not act as a solicitor for the purposes of the Solicitors Act 1974 s 20 merely by doing acts of a kind commonly done by solicitors since, to fall within that phrase, the act in question must be an act which it is lawful only for a qualified person to do and/or any other act in relation to which the unqualified person purports to act as a solicitor: see *Piper Double Glazing Ltd v DC Contracts (1992) Ltd* [1994] 1 All ER 177, [1994] 1 WLR 777.

5 Solicitors Act 1974 s 20(1)(a) (prospectively repealed: see note 1). Certain activities may only be undertaken by a firm if the firm has a principal who is a solicitor, or who is a registered European lawyer or recognised body qualified to provide that service: see the Solicitors' Code of Conduct 2007 r 20.02. Rule 20 also applies to an overseas practice: see r 15.20.

6 Solicitors Act 1974 s 20(1)(b) (prospectively repealed: see note 1).

7 As from a day to be appointed a person exempted from the provisions of the Solicitors Act 1974 s 23(1) (by virtue of s 23(2) or (3)) (see PARA 592) or the Courts and Legal Services Act 1990 s 55 (see PARA 592) may, in any non-contentious or common form probate business, apply for a grant of probate or for letters of administration or oppose such an application without committing an offence under the Solicitors Act 1974 s 20: s 20(3) (prospectively added by the Courts and Legal Services Act 1990 Sch 18 para 11; and prospectively repealed: see note 1). 'Non-contentious or common form probate business' has the same meaning as in the Supreme Court Act 1981 s 128 (see PARA 933 note 2): Solicitors Act 1974 s 20(4) (prospectively added by the Courts and Legal Services Act 1990 Sch 18 para 11).

8 Solicitors Act 1974 s 20(2)(a) (prospectively repealed: see note 1).

9 *Abercrombie v Jordan, Re Hunt* (1881) 8 QBD 187, CA (accountant using offices of solicitor and transacting business of a solicitor); *Re Berriman* (1896) 40 Sol Jo 377, DC (acting in High Court action); *Davies v Davies, Re Watts* (1913) 29 TLR 513 (obtaining decree nisi for divorce to be made absolute). Cf *Dockings v Vickery, Re Symons* (1882) 46 LT 139, DC (insufficient evidence).

10 Solicitors Act 1974 s 20(2)(b) (amended by the Courts and Legal Services Act 1990 s 125(7), Sch 20; and prospectively repealed (see note 1)).

11 See note 1.

12 Solicitors Act 1974 s 20(1), (2) (as prospectively substituted: see note 1).

UPDATE

589-590 Unqualified person not to act as a solicitor, Costs where unqualified person acts as a solicitor

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

589 Unqualified person not to act as a solicitor

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

NOTE 1--References to Courts and Legal Services Act 1990 ss 20, 27 should be to Solicitors Act 1974 ss 20, 27.

NOTE 5--Solicitors' Code of Conduct 2007 r 15.20 amended on 31 March 2009.

NOTE 7--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/B. UNQUALIFIED PERSONS ACTING AS A SOLICITOR ETC/590. Costs where unqualified person acts a solicitor.

590. Costs where unqualified person acts a solicitor.

No costs in respect of anything done by any unqualified person acting as a solicitor¹ are recoverable by him, or by any other person, in any action, suit or matter².

However this does not prevent the recovery of money paid or to be paid by a solicitor on behalf of a client in respect of anything done by the solicitor while acting for the client without holding a practising certificate in force if that money would have been recoverable if he had held such a certificate when so acting³.

¹ As to the meaning of 'unqualified person' see PARA 589 note 3. As to the meaning of 'solicitor' see PARA 600 note 1.

² Solicitors Act 1974 s 25(1). As from a day to be appointed, for the avoidance of doubt, where a person does an act which would be an offence under the Solicitors Act 1974 s 23 (see PARA 592) were it not for the provisions of the Courts and Legal Services Act 1990 s 54 or s 55, the Solicitors Act 1974 s 25 does not apply in relation to the Courts and Legal Services Act 1990: Solicitors Act 1974 s 25(3) (prospectively added by the Courts and Legal Services Act 1990 s 125(3)). At the date at which this volume states the law no such day had been appointed. An unqualified person does not act as a solicitor within the meaning of the Solicitors Act 1974 s 25(1) merely by doing acts of a kind commonly done by solicitors since, to fall within that phrase, the act in question must be an act which it is lawful only for a qualified solicitor to do and/or any other act in relation to which the unqualified person purports to act as a solicitor: see *Piper Double Glazing Ltd v DC Contracts (1992) Ltd* [1994] 1 All ER 177, [1994] 1 WLR 777. See also 667.

³ Solicitors Act 1974 s 25(2). See also PARA 667.

UPDATE

589-590 Unqualified person not to act as a solicitor, Costs where unqualified person acts as a solicitor

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/B. UNQUALIFIED PERSONS ACTING AS A SOLICITOR ETC/591. Unqualified person not to pretend to be solicitor.

591. Unqualified person not to pretend to be solicitor.

Any unqualified person¹ who wilfully pretends to be, or takes or uses any name, title, addition or description implying that he is, qualified or recognised by law as qualified to act as a solicitor² is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale³. However, no offence is committed under this provision by the use of the term: (1) 'patent attorney' in reference to a registered patent agent or 'European patent attorney' in reference to a person on the European list⁴; or (2) 'trade mark attorney' in reference to a registered trade mark agent⁵.

Proceedings for the offence may be brought at any time before the expiration of two years from the commission of the offence or six months from its first discovery by the prosecutor, whichever period expires first⁶. If an act is done by a body corporate, or by any director, officer or servant of a body corporate, of such a nature or in such a manner as to be calculated to imply that the body corporate is qualified or recognised by law as qualified to act as a solicitor, the body corporate is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale⁷, and the director, officer or servant doing the act is similarly liable⁸.

Neither membership of the Law Society⁹ nor the holding of a current practising certificate disqualifies a magistrate from adjudicating on proceedings in respect of these penalties¹⁰. It is thought that evidence of bias must be proved, and neither fact of itself would be sufficient¹¹.

1 As to the meaning of 'unqualified person' see PARA 589 note 3.

2 As to the meaning of 'solicitor' see PARA 600 note 1 and as to solicitors generally see PARA 600 et seq.

3 Solicitors Act 1974 s 21 (amended by the Administration of Justice Act 1985 Sch 1 para 6, Sch 9 para 17). As to the standard scale see PARA 571 note 1. An advertisement which contains a representation by someone that he is a person recognised by law and qualified to act as a solicitor, if wilfully and falsely made, is a pretence of the kind contemplated by the Solicitors Act 1974 s 21: *Carter v Butcher* [1966] 1 QB 526, [1965] 1 All ER 994, DC. See also *Symonds v Incorporated Law Society* (1884) 49 JP 212, DC; *Incorporated Law Society v Bedford* (1885) 49 JP 215, DC; *Re An Application by the Incorporated Law Society* (1885) 1 TLR 354, DC; *Taylor v Richardson* [1938] 2 All ER 681, DC (solicitor suspended from practice). The offence is a serious one: *Hall v Jordan* [1947] 1 All ER 826, DC.

4 See the Copyright, Designs and Patents Act 1988 s 278(2), (3); and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 615.

5 See the Trade Marks Act 1994 s 86; and **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 37. As from a day to be appointed s 86 is amended by the Legal Services Act 2007 Sch 21 para 112 so that registered trade mark agents are renamed registered trade mark attorneys. At the date at which this volume states the law no such day had been appointed.

6 See the Solicitors Act 1974 s 26 (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 132). This also applies until a day to be appointed to proceedings for the offences under the Solicitors Act 1974 ss 22, 23 (see PARAS 592, 595): s 26 (prospectively amended by the Legal Services Act 2007 Sch 16 para 28, Sch 23).

7 Solicitors Act 1974 s 24(1)(a) (amended by the Administration of Justice Act 1985 Sch 1 para 7, Sch 9 para 17).

8 Solicitors Act 1974 s 24(1)(b) (as amended: see note 7).

9 As to the Law Society see PARA 604 et seq.

10 *R v Burton, ex p Young* [1897] 2 QB 468, DC.

11 As to the possible effect of membership of the Council of the Law Society see **MAGISTRATES** vol 29(2) (Reissue) PARA 557.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/B. UNQUALIFIED PERSONS ACTING AS A SOLICITOR ETC/592. Unqualified person not to prepare papers for probate.

592. Unqualified person not to prepare papers for probate.

Until a day to be appointed the following provisions have effect¹. Any unqualified person² who, directly or indirectly, draws or prepares any papers on which to found or oppose a grant of probate or a grant of letters of administration³ is guilty of an offence⁴ unless he proves that the act was not done for or in expectation of any fee, gain or reward⁵.

This provision does not apply to⁶:

- 571 (1) a barrister or a duly certificated notary public⁷;
- 572 (2) any act done by a person at the direction and under the supervision of another person if that other person was at the time his employer, a partner of his employer or a fellow employee and the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this provision⁸;
- 573 (3) a recognised body⁹;
- 574 (4) any act done by an officer or employee of a recognised body if:
 - 19 24. (a) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and
 - 25. (b) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence¹⁰;
- 20 575 (5) any person to whom exemption from this provision is granted by an approved body¹¹.

1 As from a day to be appointed, the Solicitors Act 1974 s 23 (substituted by the Administration of Justice Act 1985 s 7) and the Solicitors Act 1974 s 55 are repealed by the Legal Services Act 2007 Sch 16 para 26(b), Sch 21 para 88, Sch 23; the Administration of Justice Act 1985 s 9(4) is repealed by the Legal Services Act 2007 Sch 16 paras 80, 81(1), (7), Sch 23; and the Courts and Legal Services Act 1990 s 55(1) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 88, Sch 23. At the date at which this volume states the law no such days had been appointed.

2 As to the meaning of 'unqualified person' see PARA 589 note 3.

3 As to grants of probate and grants of letters of administration see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 194 et seq.

4 Such a person is liable on summary conviction to a fine not exceeding level 1 on the standard scale: Solicitors Act 1974 s 23(1) (substituted; and prospectively repealed (see note 1)). As to when proceedings for this offence may be brought see PARA 591. Where a person does any act which would constitute an offence under the Solicitors Act 1974 s 23(1) but for an exemption given to him by s 23 or by or under any other enactment, he is not guilty of an offence under s 22 (see PARA 595) by virtue of having done that act: s 23(4) (prospectively added by the Courts and Legal Services Act 1990 s 54(1) as from a day to be appointed under s 124(3)). At the date at which this volume states the law, no such day had been appointed. As to the standard scale see PARA 571 note 1.

5 Solicitors Act 1974 s 23(1) (substituted; and prospectively repealed (see note 1)).

6 As from a day to be appointed the Solicitors Act 1974 s 23(2), (3) are substituted and s 23(2A), (4) are added by the Courts and Legal Services Act 1990 s 54(1) so that the exemptions set out in heads (1) and (2) in the text will be replaced with the following exemptions:

- 489 (1) a barrister (Solicitors Act 1974 s 23(2)(a) (as so prospectively substituted and prospectively repealed (see note 1)));
- 490 (2) a duly certificated notary public (Solicitors Act 1974 s 23(2)(b) (as so prospectively substituted and repealed));
- 491 (3) the Public Trustee (s 23(3)(c) (as so prospectively substituted and repealed));
- 492 (4) the Official Solicitor (s 23(3)(d) (as so prospectively substituted and repealed));
- 493 (5) any institution which is authorised under the Banking Act 1987 Pt I (ss 1-49) (repealed) by the Bank of England to carry on a deposit-taking business and satisfies certain conditions (Solicitors Act 1974 s 23(2)(e) (as so prospectively substituted and repealed));
- 494 (6) any building society which is authorised under the Building Societies Act 1986 s 9 (repealed) to raise money from its members by the Building Societies Commission and satisfies certain conditions (Solicitors Act 1974 s 23(2)(f) (as so prospectively substituted and repealed));
- 495 (7) any insurance company which is authorised under the Insurance Companies Act 1982 s 3 or s 4 (repealed) and satisfies certain conditions (Solicitors Act 1974 s 23(2)(g) (as so prospectively substituted and repealed));
- 496 (8) any subsidiary (as defined by the Companies Act 1985 s 736(1) (see **COMPANIES** vol 14 (2009) PARA 25)) of a body falling within heads (5) to (7) above whose business, or any part of whose business, consists of acting as trustee or executor and which satisfies certain conditions (Solicitors Act 1984 s 23(2)(h) (as so prospectively substituted and repealed));
- 497 (9) a jointly controlled body or subsidiary whose business, or any part of whose business, consists of acting as trustee or executor and which satisfies certain conditions (Solicitors Act 1984 s 23(2)(i) (as so prospectively substituted and repealed));
- 498 (10) any act done by an officer or employee of a body corporate at a time when it is exempt from the prohibition by virtue of any of heads (5) to (8) above or by virtue of the Courts and Legal Services Act 1990 s 55 (prospectively repealed) (Solicitors Act 1984 s 23(3)(a) (as so prospectively substituted and repealed));
- 499 (11) any act done by any person at the direction and under the supervision of another person if that other person was at the time his employer, a partner of his employer or a fellow employee and the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under this provision (Solicitors Act 1984 s 23(3)(b) (as so prospectively substituted and repealed)).

At the date at which this volume states the law, however, heads (1) to (11) above are not in force.

The conditions referred to above are that the body is a member of, or otherwise subject to, a scheme which (a) has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of probate services; and (b) complies with such requirements as may be prescribed by regulations made by the Lord Chancellor with respect to matters relating to such complaints: s 23(2A) (as so prospectively substituted and repealed). At the date at which this volume states the law, no such day had been appointed.

In head (9) 'jointly controlled body' and 'subsidiary' have the meanings given by the Friendly Societies Act 1992 s 13 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 2134): Solicitors Act 1974 s 23(2B) (added by the Friendly Societies Act 1992 s 120(1), Sch 21 para 5). Although Sch 1 para 5 was brought into force on 1 February 1993 (see the Friendly Societies Act 1992 (Commencement No 3 and Transitional Provisions) Order 1993, SI 1993/16), it is thought that this amendment was intended to be made to the Solicitors Act 1974 s 23 as prospectively amended by the Courts and Legal Services Act 1990 s 54(1). At the date at which this volume states the law, that amendment was not in force.

7 Solicitors Act 1974 s 23(2) (substituted; and prospectively repealed (see note 1)). As to the meaning of 'duly certificated notary public' see PARA 1412.

8 Solicitors Act 1974 s 23(3) (substituted; and prospectively repealed (see note 1)).

9 Solicitors Act 1974 s 23(1) does not apply to recognised bodies notwithstanding s 24(2) (see PARA 589 note 3): see the Administration of Justice Act 1985 s 9(3); and PARA 687. As to the meaning of 'recognised body' see

PARA 687 note 3. As from a day to be appointed the Administration of Justice Act 1985 s 9(3) is substituted by the Legal Services Act 2007 Sch 16 paras 80, 81(1), (6) so as to no longer apply to the Solicitors Act 1974 s 23(1). At the date at which this volume states the law no such day had been appointed.

10 Administration of Justice Act 1985 s 9(4) (prospectively repealed: see note 1). The offence referred to is an offence under the Solicitors Act 1974 s 23: Administration of Justice Act 1985 s 9(4) (as so prospectively repealed).

11 See the Courts and Legal Services Act 1990 s 55; and PARA 503.

UPDATE

592 Unqualified person not to prepare papers for probate

TEXT AND NOTES 1-9, 11--Repeal of Solicitors Act 1974 s 23 and Courts and Legal Services Act 1990 s 55 in force 1 January 2010: SI 2009/3250.

NOTE 1--Reference to Solicitors Act 1974 s 55 should be to Courts and Legal Services Act 1990 s 55.

TEXT AND NOTE 10--Repeal of Administration of Justice Act 1985 s 9(4) in force 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/B. UNQUALIFIED PERSONS ACTING AS A SOLICITOR ETC/593. Application of penal provisions to body corporate.

593. Application of penal provisions to body corporate.

If any act is done by a body corporate¹, or by any director, officer or servant of a body corporate, and is of such a nature or is done in such a manner as to be calculated to imply that the body corporate is qualified or recognised by law as qualified to act as a solicitor:

- 576 (1) the body corporate is guilty of an offence²; and
- 577 (2) in the case of an act done by a director, officer or servant of the body corporate, he is also guilty of an offence³.

1 For the avoidance of doubt it is hereby declared that in the Solicitors Act 1974 ss 20, 22, 23 references to unqualified persons and to persons include references to bodies corporate: s 24(3). As from a day to be appointed s 24(3) is amended by the Legal Services Act 2007 Sch 16 paras 1, 27 and no longer refers to the Solicitors Act 1974 ss 22, 23. At the date at which this volume states the law no such day had been appointed.

2 Solicitors Act 1974 s 24(1)(a). Such a body is liable on summary conviction to a fine not exceeding the fourth level on the standard scale: s 24(1)(a) (amended by the Administration of Justice Act 1985 Sch 1 para 7). As to the standard scale see PARA 571 note 1.

3 Solicitors Act 1974 s 24(1)(b). Such a person is liable on summary conviction to a fine not exceeding the fourth level on the standard scale: s 24(1)(b) (amended by the Administration of Justice Act 1985 Sch 1 para 7).

UPDATE

593 Application of penal provisions to body corporate

NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/C. PRETENDING TO BE A BARRISTER/594. Person pretending to be a barrister.

C. PRETENDING TO BE A BARRISTER

594. Person pretending to be a barrister.

As from a day to be appointed the following provisions take effect¹. It is an offence for a person who is not a barrister² wilfully to pretend to be a barrister or with the intention of implying falsely that that person is a barrister to take or use any name, title or description³.

1 The Legal Services Act 2007 s 181 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'barrister' see PARA 1033 and as to barristers generally see PARA 1033 et seq.

3 Legal Services Act 2007 s 181(1). A person who is guilty of an offence under s 181(1) is liable on summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both) and on conviction on indictment, to imprisonment for a term not exceeding two years or a fine (or both): s 181(2). In relation to an offence under s 181(1) committed before the commencement of the Criminal Justice Act 2003 s 154(1) the reference in the Legal Services Act 2007 s 181 to 12 months is to be read as a reference to six months: s 181(3). As to the statutory maximum see PARA 553 note 6.

UPDATE

594 Person pretending to be a barrister

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/D. UNQUALIFIED PERSON PREPARING CERTAIN INSTRUMENTS/595.
Unqualified person not to prepare certain instruments.

D. UNQUALIFIED PERSON PREPARING CERTAIN INSTRUMENTS

595. Unqualified person not to prepare certain instruments.

Until a day to be appointed the following provisions have effect¹. Any unqualified person² who directly or indirectly draws or prepares any instrument of transfer or charge for the purposes of the Land Registration Act 2002³, or makes any application or lodges any document for registration under that Act at the registry⁴, or draws or prepares any other instrument relating to real or personal estate or any legal proceeding is guilty of an offence⁵ unless he proves that the act was not done for or in expectation of any fee, gain or reward⁶.

This provision does not apply:

- 578 (1) in relation to any act done in the exercise of a right of audience⁷;
- 579 (2) in relation to any act done in the exercise of a right to conduct litigation⁸;
- 580 (3) to a recognised body⁹;
- 581 (4) to any act done by an officer or employee of a recognised body if: (a) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and (b) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence¹⁰;
- 582 (5) to a body corporate by reason of any act done by an officer or employee of the body if: (a) at the time it was done the body was a recognised body for the purposes of the statutory provisions relating to conveyancing¹¹; and (b) it was done in the course of the provision of conveyancing services¹² which the body was not precluded from undertaking to provide as a recognised body by any restrictions imposed¹³ under the Administration of Justice Act 1985¹⁴;
- 583 (6) to any officer or employee of a body corporate by reason of any act done by him if: (a) certain statutory conditions¹⁵ are satisfied in relation to that act; (b) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and (c) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence¹⁶;
- 584 (7) to a barrister or duly certificated notary public¹⁷;
- 585 (8) to a registered trade mark agent¹⁸ drawing or preparing any instrument relating to any design or trade mark¹⁹;
- 586 (9) to a registered patent agent²⁰ drawing or preparing any instrument relating to any invention, design, technical information or trade mark²¹;
- 587 (10) to any accredited person²² drawing or preparing any instrument which creates, or which he believes on reasonable grounds will create, a farm business tenancy²³, or which relates to an existing tenancy which is, or which he believes on reasonable grounds to be, such a tenancy²⁴;
- 588 (11) to any public officer drawing or preparing instruments or applications in the course of his duty²⁵;
- 589 (12) to any person employed merely to engross any instrument, application or proceeding²⁶;

590 (13) to any act done by a person at the direction and under the supervision of another person if that other person was at the time his employer, a partner of his employer or a fellow employee and the act could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence²⁷.

1 The Solicitors Act 1974 s 22 is repealed by the Legal Services Act 2007 Sch 16 paras 1, 26(a), Sch 23 as from a day to be appointed under the Legal Services Act 2007 s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 22 is subject to s 22(2), (2A): s 22(1) (amended by the Administration of Justice Act 1985 s 6(1), (2); and prospectively repealed). As to the meaning of 'unqualified person' see PARAS 589 note 3, 642 note 12.

3 See **LAND REGISTRATION; REAL PROPERTY**.

4 Solicitors Act 1974 s 22(1)(a) (amended by the Land Registration Act 2002 Sch 11 para 12(1), (2); and prospectively repealed (see note 1)). This prohibition did not extend to an application for an official search or for office copies under the Land Registration Act 1925 s 112 as they were not applications for registration: *Carter v Butcher* [1966] 1 QB 526, [1965] 1 All ER 994, DC.

5 Solicitors Act 1974 s 22(1)(b) (prospectively repealed: see note 1). Such a person liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 22(1) (amended by the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 571 note 1. 'Instrument', for this purpose, includes a contract for the sale or other disposition of land except a contract to grant such a lease as is referred to in the Law of Property Act 1925 s 54(2) (short leases), but does not include: (1) a will or other testamentary disposition; (2) an agreement not intended to be executed as a deed other than a contract that is included by virtue of the preceding provisions of the Solicitors Act 1974 s 22(3); (3) a letter or power of attorney; or (4) a transfer of stock containing no trust or limitation thereof: Solicitors Act 1925 s 22(3) (amended by the Administration of Justice Act 1985 ss 6(1), (4), 69(5), Sch 9 para 5(b); and by the Law of Property (Miscellaneous Provisions) Act 1989 s 1(8), Sch 1 para 8; and so prospectively repealed).

6 Solicitors Act 1974 s 22(1) (prospectively repealed: see note 1).

7 See the Courts and Legal Services Act 1990 s 27(10) (prospectively repealed); and para 497. The Solicitors Act 1974 s 22(1)(b) (drawing or preparing 'any other instrument') does not apply to a duly certificated solicitor in Scotland: see s 22(2) (prospectively repealed: see note 1). 'Solicitor in Scotland' means a person enrolled or deemed to have been enrolled as a solicitor in pursuance of the Solicitors (Scotland) Act 1933: Solicitors Act 1974 s 87(1). For the purposes of Pt I (ss 1-30), a letter purporting to be signed by or on behalf of the registrar of solicitors in Scotland: (1) stating that a person specified in the letter is or is not a solicitor in Scotland is evidence that that person is, or, as the case may be, is not a solicitor in Scotland; (2) stating that a person specified in the letter did not at any time during a period so specified have in force a practising certificate as a solicitor in Scotland is evidence that that person was not during any part of that period a duly certificated solicitor in Scotland: s 30. As to the meaning of 'right of audience' see PARA 495 note 3.

8 See the Courts and Legal Services Act 1990 s 28(6) (prospectively repealed); and PARA 498. As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

9 The Solicitors Act 1974 s 22(1) does not apply to recognised bodies notwithstanding s 24(2) (see PARA 589 note 2): see the Administration of Justice Act 1985 s 9(3). As to the meaning of 'recognised body' see PARA 687 note 3.

10 See the Administration of Justice Act 1985 s 9(4) (prospectively repealed); and PARA 687. The offence referred to is an offence under the Solicitors Act 1974 s 22(1): Administration of Justice Act 1985 s 9(4) (as so prospectively repealed).

11 Is a recognised body for the purposes of the Administration of Justice Act 1985 s 32: see PARA 1392.

12 As to the meaning of 'conveyancing services' for these purposes see PARA 495 note 5.

13 Is restrictions under the Administration of Justice Act 1985 s 32(3)(d) (prospectively repealed): see PARA 1392.

14 See the Administration of Justice Act 1985 s 32(4) (prospectively repealed); and PARA 1392.

15 le the conditions of the Administration of Justice Act 1985 s 32(4) (prospectively repealed) (see PARA 1392).

16 See the Administration of Justice Act 1985 s 32(5) (prospectively repealed) and PARA 1392. The offence referred to is an offence under the Solicitors Act 1974 s 22 (prospectively repealed): see the Administration of Justice Act 1985 s 32(5) (prospectively repealed).

17 Solicitors Act 1974 s 22(2)(a) (prospectively repealed: see note 1). As to the meaning of 'duly certificated notary public' see PARA 1412.

18 'Registered trade mark agent' has the same meaning as in the Trade Marks Act 1994: Solicitors Act 1974 s 22(3A) (added by the Courts and Legal Services Act 1990 s 68(1), (3); amended by the Trade Marks Act 1994 s 106(1), Sch 4 para 5(1), (3); and prospectively repealed (see note 1)).

19 Solicitors Act 1974 s 22(2)(aa) (added by the Courts and Legal Services Act 1990 s 68(1), (2); amended by the Trade Marks Act 1994 Sch 4 para 5(1), (2); and prospectively repealed (see note 1)).

20 'Registered patent agent' has the same meaning as in the Copyright, Designs and Patents Act 1988: Solicitors Act 1974 s 22(3A) (as added and amended (see note 18); and prospectively repealed).

21 Solicitors Act 1974 s 22(2)(ab) (added by the Courts and Legal Services Act 1990 s 68(1), (2); amended by the Trade Marks Act 1994 s 106(1), Sch 4 para 5(1), (2); and prospectively repealed (see note 1)).

22 'Accredited person' means: (1) any person who is a Full Member of the Central Association of Agricultural Valuers; (2) an Associate or Fellow of the Incorporated Society of Valuers and Auctioneers; or (3) an Associate or Fellow of the Royal Institution of Chartered Surveyors: Solicitors Act 1974 s 22(3) (amended by the Agricultural Tenancies Act 1995 s 35(3); and prospectively repealed (see note 1)). See also **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 284.

23 le a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995 (see **AGRICULTURAL LAND** vol 1 (2008) PARA 301 et seq).

24 Solicitors Act 1974 s 22(2)(ac) (added by the Agricultural Tenancies Act 1995 s 35(1), (2); and prospectively repealed (see note 1)).

25 Solicitors Act 1974 s 22(2)(b) (prospectively repealed: see note 1).

26 Solicitors Act 1974 s 22(2)(c) (prospectively repealed: see note 1).

27 Solicitors Act 1974 s 22(2A) (added by the Administration of Justice Act 1985 s 6(1), (3); and prospectively repealed (see note 1)). The offence referred to is an offence under the Solicitors Act 1974 s 22: see s 22(2A) (as so added and prospectively repealed).

UPDATE

595-597 Unqualified person not to prepare certain instruments ... Issue of warrants to local weights and measures authorities

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/D. UNQUALIFIED PERSON PREPARING CERTAIN INSTRUMENTS/596. Enforcement by local weights and measures authorities.

596. Enforcement by local weights and measures authorities.

Until a day to be appointed the following provisions have effect¹. A local weights and measures authority² may institute proceedings³ in relation to the preparation of certain instruments by unqualified persons⁴. Any authorised officer⁵ who has reasonable cause to suspect that such an offence⁶ may have been committed may, at any reasonable time:

- 591 (1) enter any premises which are not used solely as a dwelling⁷;
- 592 (2) require any officer, agent or other competent person on the premises who is, or may be, in possession of information relevant to an investigation⁸ to provide such information⁹;
- 593 (3) require the production of any document¹⁰ which may be relevant to such an investigation¹¹;
- 594 (4) take copies, or extracts, of any such documents¹²;
- 595 (5) seize and retain any document which he has reason to believe may be required as evidence in proceedings for such an offence¹³.

Any person exercising this power must, if asked to do so, produce evidence that he is an authorised officer¹⁴.

If a person:

- 596 (a) intentionally obstructs an authorised officer in the exercise of any of these powers¹⁵;
- 597 (b) intentionally fails to comply with any requirement properly imposed on him by an authorised officer in the exercise of any such power¹⁶;
- 598 (c) fails, without reasonable cause, to give to an authorised officer any assistance or information which he may reasonably require of him for the purpose of exercising any such power¹⁷; or
- 599 (d) makes any statement which he knows to be false or misleading in a material particular in giving to an authorised officer any information which he has been required to give to an authorised officer exercising any such power¹⁸,

he is guilty of an offence¹⁹. However, nothing in this provision requires a person to answer any question put to him by an authorised officer, or to give him any information if to do so might incriminate him²⁰.

¹ The Solicitors Act 1974 ss 22, 22A (s 22A added by the Courts and Legal Services Act 1990 s 96) are repealed by the Legal Services Act 2007 Sch 16 paras 1, 26(a), Sch 23 as from a day to be appointed under the Legal Services Act 2007 s 211(2). At the date at which this volume states the law no such day had been appointed.

² As to weights and measures authorities see the Weights and Measures Act 1985 s 69; and **WEIGHTS AND MEASURES**.

³ ie proceedings under the Solicitors Act 1974 s 22 (prospectively repealed (see note 1)) (see PARAS 595-596).

4 Solicitors Act 1974 s 22(4) (added by the Administration of Justice Act 1985 s 6(5); and prospectively repealed (see note 1)). As to the meaning of 'unqualified person' see PARA 642 note 12.

5 'Authorised officer' means any officer of a local weights and measures authority who is authorised by the authority to exercise the powers given by the Solicitors Act 1974 s 22A(1): Solicitors Act s 22A(8) (as added and prospectively repealed (see note 1)).

6 Is an offence under the Solicitors Act 1974 s 22 (prospectively repealed) (see PARAS 595-596).

7 Solicitors Act 1974 s 22A(1)(a) (as added and prospectively repealed (see note 1)).

8 Is an investigation under the Solicitors Act 1974 s 22 (prospectively repealed): see s 22A(1)(b) (as added and prospectively repealed (see note 1)).

9 Solicitors Act 1974 s 22A(1)(b) (as added and prospectively repealed (see note 1)).

10 'Document' includes information recorded in any form: Solicitors Act 1974 s 22A(8) (as added and prospectively repealed (see note 1)). In relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form: s 22A(9) (as so added and prospectively repealed).

11 Solicitors Act 1974 s 22A(1)(c) (as added and prospectively repealed (see note 1)).

12 Solicitors Act 1974 s 22A(1)(d) (as added and prospectively repealed (see note 1)).

13 Solicitors Act 1974 s 22A(1)(e) (as added and prospectively repealed (see note 1)).

14 Solicitors Act 1974 s 22A(2) (as added and prospectively repealed (see note 1)).

15 Solicitors Act 1974 s 22A(5)(a) (as added and prospectively repealed (see note 1)).

16 Solicitors Act 1974 s 22A(5)(b) (as added and prospectively repealed (see note 1)).

17 Solicitors Act 1974 s 22A(5)(c) (as added and prospectively repealed (see note 1)).

18 Solicitors Act 1974 s 22A(5)(d) (as added and prospectively repealed (see note 1)).

19 Solicitors Act 1974 s 22A (5), (6) (as added and prospectively repealed (see note 1)). Such a person is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 22A(5). As to the standard scale see PARA 571 note 1.

20 Solicitors Act 1974 s 22A(7) (as added and prospectively repealed (see note 1)).

UPDATE

595-597 Unqualified person not to prepare certain instruments ... Issue of warrants to local weights and measures authorities

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/D. UNQUALIFIED PERSON PREPARING CERTAIN INSTRUMENTS/597. Issue of warrants to local weights and measures authorities.

597. Issue of warrants to local weights and measures authorities.

Until a day to be appointed the following provisions have effect¹. A justice of the peace may issue a warrant if he is satisfied, on information on oath given by an authorised officer², that there is reasonable cause to believe that in relation to the preparation of certain instruments by unqualified persons³ an offence⁴ may have been committed and that entry to the premises concerned, or production of documents⁵ which may be relevant to such an investigation, has been or is likely to be refused to an authorised officer, or there is reasonable cause to believe that, if production of any such document were to be required by the authorised officer without a warrant having been issued, the document would not be produced but would be removed from the premises or hidden, tampered with or destroyed⁶.

A warrant so issued authorises the authorised officer to enter the premises specified in the information, using such force as is reasonably necessary and to exercise any of the powers given in such circumstances to an authorised officer⁷. The authorised officer may, if he considers it appropriate, be accompanied by a constable or any other person⁸.

1 The Solicitors Act 1974 s 22A (added by the Courts and Legal Services Act 1990 s 96) is repealed by the Legal Services Act 2007 Sch 16 paras 1, 26(a), Sch 23 as from a day to be appointed under the Legal Services Act 2007 s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'authorised officer' see PARA 596 note 5.

3 As to the meaning of 'unqualified person' see PARA 642 note 12.

4 Ie an offence under the Solicitors Act 1974 s 22 (prospectively repealed): see s 22A(3) (as added and prospectively repealed (see note 1)). See PARA 596.

5 As to the meaning of 'documents' see PARA 596 note 10.

6 Solicitors Act 1974 s 22A(3) (added and prospectively repealed: see note 1).

7 Solicitors Act 1974 s 22A(4) (added and prospectively repealed: see note 1).

8 See the Solicitors Act 1974 s 22A(4) (prospectively repealed).

UPDATE

595-597 Unqualified person not to prepare certain instruments ... Issue of warrants to local weights and measures authorities

Repeal of these provisions in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/E. PRETENDING TO BE A LICENSED CONVEYANCER OR RECOGNISED BODY/598. Penalty for pretending to be a licensed conveyancer or recognised body.

E. PRETENDING TO BE A LICENSED CONVEYANCER OR RECOGNISED BODY

598. Penalty for pretending to be a licensed conveyancer or recognised body.

An individual¹ must not describe himself or hold himself out as a licensed conveyancer² unless he holds a licence³ which is in force under Part II⁴ of the Administration of Justice Act 1985⁵.

A body corporate must not describe itself or hold itself out as a recognised body⁶ unless it is for the time being recognised⁷ by the Council for Licensed Conveyancers⁸.

Any person who contravenes either of these provisions is guilty of an offence⁹.

Where an offence¹⁰ which has been committed by a body corporate¹¹ is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer¹² of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly¹³.

1 As to the meaning of 'individual' see PARA 1319 note 8.

2 As to the meaning of 'licensed conveyancer' see PARA 1319.

3 As to the meaning of 'licence' see PARA 1319 note 3.

4 Ie under the Administration of Justice Act 1985 Pt II (ss 11-39): see PARA 1319 et seq.

5 Administration of Justice Act 1985 s 35(1).

6 As to the meaning of 'recognised body' for these purposes see PARA 687 note 3.

7 Ie under the Administration of Justice Act 1985 s 32: see PARA 1319.

8 Administration of Justice Act 1985 s 35(2). The word 'corporate' in the text is repealed by the Legal Services Act 2007 Sch 17 paras 1, 25, Sch 23 as from a day to be appointed under s 211(2). As the date at which this volume states the law no such day had been appointed. As to the Council for Licensed Conveyancers see PARA 1320.

9 Administration of Justice Act 1985 s 35(3). Such a person is liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 35(3). As to the standard scale see PARA 571 note 1.

10 Ie an offence under the Administration of Justice Act 1985 Pt II (ss 11-39): see PARA 1319 et seq.

11 As to the recognition of bodies corporate under the Administration of Justice Act 1985 s 32 see PARA 1392.

12 As to the meaning of 'officer' in relation to a recognised body see PARA 1392 note 37.

13 Administration of Justice Act 1985 s 36.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/2. THE PROVISION OF LEGAL SERVICES/(6) OFFENCES AND RESTRICTION ON PRACTICE/(iii) Unqualified Person Acting etc as Legal Practitioner/E. PRETENDING TO BE A LICENSED CONVEYANCER OR RECOGNISED BODY/599. Offences by bodies corporate.

599. Offences by bodies corporate.

Where an offence¹ which has been committed by a body corporate² is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer³ of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly⁴.

1 le an offence under the Administration of Justice Act 1985 Pt II (ss 11-39): see PARA 1319 et seq.

2 As to the recognition of bodies corporate under the Administration of Justice Act 1985 s 32 see PARA 1392.

3 As to the meaning of 'officer' in relation to a recognised body see PARA 1392 note 37.

4 Administration of Justice Act 1985 s 36. Section 36 is numbered s 36(1) and the words 'officer of the body corporate' are substituted for the words 'director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity' by the Legal Services Act 2007 Sch 17 paras 1, 26(a) as from a day to be appointed under s 211(2). As from a day to be appointed the following provisions also have effect. Where the affairs of a body corporate are managed by its members, s 36(1) (as so prospectively numbered and amended) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate: s 36(2) (s 36(2)-(8) prospectively added by the Legal Services Act 2007 Sch 17 paras 1, 26(b)). Proceedings for an offence under the Legal Services Act 2007 s 36 alleged to have been committed by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation: s 36(3) (as so prospectively added). A fine imposed on an unincorporated body on its conviction of an offence under s 36 is to be paid out of the funds of that body: s 36(4) (as so prospectively added). If an unincorporated body is charged with an offence under s 35, the Criminal Justice Act 1925 s 33 and the Magistrates' Courts Act 1980 Sch 3 have effect in like manner as in the case of a corporation so charged: Administration of Justice Act 1985 s 36(5) (as so prospectively added). Where an offence under s 36 committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, that officer or member as well as the unincorporated body is guilty of the offence and liable to be proceeded against and punished accordingly: s 36(6) (as so prospectively added). Where an offence under s 36 committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly: s 36(7) (as so prospectively added). For this purpose 'officer', in relation to a body corporate, means any director, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity: s 36(8) (as so prospectively added). At the date at which this volume states the law no such day had been appointed.

UPDATE

599 Offences by bodies corporate

NOTE 4--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(1) THE PROFESSION/(i) Introduction/600. Historical introduction.

3. SOLICITORS

(1) THE PROFESSION

(i) Introduction

600. Historical introduction.

By the Supreme Court of Judicature Act 1873, all solicitors, attorneys and proctors became solicitors of the Supreme Court and, as such, officers of the court¹. The Act created the term 'solicitor of the Supreme Court'. Before the commencement date of the Act a solicitor was a practitioner in the Court of Chancery, an 'attorney' was a practitioner in the Common Law Courts, and a 'proctor' practised in the Court of Probate, in the Court for Divorce and Matrimonial Causes, in the High Court of Admiralty or in the ecclesiastical courts.

Even before that date, however, the term 'solicitor' had gradually come to supersede the term 'attorney' as it became increasingly the practice for the two professions to be united in one individual, although a practitioner in the common law courts was invariably styled 'attorney'. 'Attorney' signifies anyone who acts in the turn or place of another, and the power to authorise an attorney in the general sense, for example to execute a deed, has existed from a very remote period. Attorneys-at-law whose business it was to represent plaintiffs or defendants in suits or actions are, however, of more recent origin. Until the thirteenth century a suitor was required to appear in person although once he had appeared he could be represented by an attorney appointed ad hoc by letters patent or Act of Parliament, but in 1235 the Statute of Merton allowed all freemen to do suit by attorney², and this principle was gradually extended. Solicitors first appeared in the fifteenth century in the courts of equity, where they seem to have acted as business agents rather than as lawyers, the work undertaken in the common law courts by the attorneys being carried out by court officials. At first solicitors were regarded as inferior to attorneys and in 1654 a rule of court provided that one of the qualifications for admission as an attorney was to have practised for five years as 'a common solicitor'. An Act of 1728, subsequently renewed³, regulated admission to both professions⁴ and formed the basis for future developments.

Until the end of the eighteenth century attorneys and solicitors were included among the members of the Inns of Court. During the seventeenth century there were, on the one hand, repeated attempts by the judges to require all attorneys and solicitors to be members of one of the Inns of Court or of Chancery⁵ and, on the other hand, a gradually hardening policy on the part of the Inns of Court to exclude attorneys and solicitors from membership⁶ and to drive them towards the Inns of Chancery, which by the end of the seventeenth century were almost exclusively in the hands of the attorneys. In 1762 a rule of the Committee of the Four Inns of Court was passed to the effect that no attorney or solicitor was to be called to the Bar until he had discontinued practice as such for two years, and in 1793 the Bar of Lincoln's Inn made a regulation which was adopted by the other Inns of Court finally excluding attorneys and solicitors from membership of the Inn. The Society of Gentlemen Practisers in the Courts of Law and Equity was established in 1739 for the promotion of fair and honourable practice and the detection and discountenance of all unfair practices. The Society unsuccessfully challenged the rulings of the Inns of Court excluding attorneys from membership, but it was able to defeat the claims of the Scriveners' Company to establish a virtual monopoly in conveyancing and it continued in active existence, criticising and sponsoring legislation on professional matters affecting attorneys, until at least 1816, when its records ceased.

¹ Supreme Court of Judicature Act 1873 s 87 (repealed). See now the Solicitors Act 1974 s 50(1); and PARA 745. For the purposes of the Solicitors Act 1974, the Courts and Legal Services Act 1990 and the Legal Services

Act 2007 'solicitor' means a solicitor of the Supreme Court: Solicitors Act 1974 s 87(1); Courts and Legal Services Act 1990 s 119(1); Legal Services Act 2007 s 207(1). However, as from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. Consequently as from a day to be appointed the words 'Senior Courts' in the definition of solicitors are substituted for the words 'Supreme Court': see the Constitutional Reform Act 2005 Sch 11 paras 4(1), (3), 21(1), (6); Legal Services Act 2007 Sch 22 para 11(1). At the date at which this volume states the law no such day had been appointed.

2 20 Hen 3 c 10 (Attorneys in County Courts) (1235) (repealed).

3 12 Geo 2 c 13 (Price of bread etc) (1738); 22 Geo 2 c 46 (Continuation of laws etc) (1748) (both repealed).

4 2 Geo 2 c 23 (Attorneys and solicitors) (1728) (repealed).

5 See eg Rules and Orders of the Court of Common Pleas of Hilary Term 1632; Rules and Orders of the Court of Upper Bench 1654 s 1; Rules and Orders of the Court of Common Pleas of Trinity Term 1677 s 1; Rules and Orders of the Court of Common Pleas of Michaelmas Term 1684.

6 See eg the resolution of 1614 (2 Calendar of Inner Temple Records 84): 'There ought always to be preserved the difference between a counsellor at law, which is the principal person next unto serjeants and judges in the administration of justice, and attorneys and solicitors, which are but ministerial persons and of an inferior nature, therefore it is ordered that henceforth no common attorney or solicitor shall be admitted of any of the four Houses of Court'.

UPDATE

600 Historical introduction

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

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601. Admission to the profession.

By the eighteenth century the Inns of Chancery had become little more than dining clubs¹, and they never exercised the same professional discipline and control over attorneys and solicitors as did Benchers of the Inns of Court over barristers. For some time after the right to appear by attorney had been established there existed no regulation as to the admission of attorneys, although a discretionary power seems to have been vested in the chief officers of the court to appoint proper persons as attorneys, and in 1292 the judges were empowered to select a number of attorneys to do service in the courts². As early as the fourteenth century, however, the profession was evidently overcrowded, and in 1322 limitations were placed on the powers of the Barons of the Exchequer to admit attorneys³. Subsequent legislation was aimed at restricting the number of attorneys to be admitted and at imposing some measure of control over the profession⁴. An Act of 1729 provided for service under articles by students and for examinations to be conducted by the judges as to the fitness and capacity of those seeking admission as solicitors or attorneys⁵, but in fact the intermittent and informal examinations which took place before the judges, either of the common law courts or in Chancery, extended to little more than questions as to character and service under articles. The Society of Gentlemen Practisers⁶, although anxious to raise the status of the profession, was unable to take any effective steps in this direction.

In 1831 a charter was granted to The Law Society⁷, six years after its committee of management had been set up. The Society quickly turned its attention to the subject of legal education and in 1833 instituted lectures on the different branches of common law, equity and conveyancing. In 1836, rules of court were made by which persons seeking admission as attorneys were required to pass an examination conducted by the Council of the Law Society, together with certain officers of the court, and in 1837 the Master of the Rolls made a similar order for the examination in equity of solicitors. The Solicitors Act 1843 empowered the judges to make regulations for the conduct of the examinations, and the Master of the Rolls, in 1844, and the judges, in 1846, made regulations accordingly, in effect confirming the previous arrangements. In 1853 the regulations were consolidated.

The Solicitors Act 1877 placed the entire practical control of the preliminary examination (introduced by the Solicitors Act 1860⁸) and of the intermediate and final examinations in the hands of The Law Society, and the Solicitors Act 1974 vested complete control over the qualifications for admission as a solicitor in the Society, subject only to the approval by the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls of the Society's training regulations. By the Courts and Legal Services Act 1990, this control was subject to important additional controls, exercised formerly by the Lord Chancellor's advisory committee, and latterly, and until a day to be appointed, by the Legal Services Consultative Panel⁹. Under the Legal Services Act 2007 an equivalent oversight is exercised by the Legal Services Board¹⁰.

1 The Inns of Chancery were eventually dissolved in the latter part of the nineteenth century, the last to disappear being New Inn and Cliffords Inn, on the dissolution of which certain funds were made available to the Council of Legal Education and the Law Society for the purposes of legal education: Order of Court of Chancery dated 7 February 1905. See also PARAS 1039, 1062.

2 See the ordinance De Attornatis et Apprenticiis of 1292 (Rot Parl 1. 84) (repealed).

3 See 15 Edw 2 (Exchequer) (1322) (Ruff) (repealed).

4 See eg 4 Hen 4 c 18 (Attorneys) (1402) (repealed); 33 Hen 6 c 7 (Limitation of Attorneys) (1455) (repealed); 3 Jac 1 c 7 (Attorneys) (1605) (repealed). In 1654 a Rule of the Supreme Court of Westminster provided that an attorney had to prove five years' experience as a solicitor or as a clerk to a judge, serjeant-at-law, barrister, attorney, clerk or other officer of the court and satisfy examiners as to his ability and honesty before admission.

5 1e 2 Geo 2 c 23 (Attorneys and solicitors) (1728) (repealed).

6 As to the Society of Gentlemen Practisers see para 600.

7 The full title was 'The Society of Attorneys, Solicitors, Proctors and others not being Barristers, practising in the Courts of Law and Equity of the United Kingdom'. It had a link with the Society of Gentlemen Practisers, certain of whose former members served on the committee of management of the new Society.

8 See the Solicitors Act 1860 s 8 (repealed).

9 See the Courts and Legal Services Act 1990 s 18A; and paras 327-328. As from a day to be appointed the Courts and Legal Services Act 1990 s 18A is repealed by the Legal Services Act 2007 s 208, 210, Sch 21, paras 83, 84(c), Sch 23. At the date at which this volume stated the law no such day had been appointed.

10 See the Legal Services Act 2007 ss 2-11, Sch 1; and para 303 et seq. At the date at which this volume states the law these provisions had not yet been fully brought into force. As to the Legal Services Board see para 303.

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602. Savings from earlier legislation.

The Solicitors Act 1974 contains a general saving for any instrument or other document which was, had effect as if, or was treated as having been, made, issued, served or kept and any other thing done under or for the purposes of any of the Acts which it repeals¹. Instruments and documents so saved are to be treated as having been made, issued, served, kept or done under or for the purposes of the corresponding provisions of that Act². Any enactment or other document referring to any enactment repealed by the Solicitors Act 1974 is, so far as necessary for preserving its effect, to be construed as referring to the corresponding provision of that Act³. All references in any other enactment to solicitors, attorneys or proctors, or to the registrar of attorneys and solicitors or the registrar of solicitors, are to be construed as references to solicitors and to the Law Society respectively⁴.

1 See the Solicitors Act 1974 s 89(3). Nothing in that Act prejudices the operation of the Interpretation Act 1978 ss 16, 17 (see **STATUTES** vol 44(1) (Reissue) PARA 1306 et seq): Solicitors Act 1974 s 89(8); Interpretation Act 1978 s 17(2)(a).

2 Solicitors Act 1974 s 89(3). As to the construction of instruments having effect by virtue of such a general saving in the repealing legislation see *Re A Solicitor, Re A Taxation of Costs* [1955] 2 QB 252 at 261-262, [1955] 1 All ER 257 at 262-263 (affd [1955] 2 QB 252, [1955] 2 All ER 383, CA); and **STATUTES** vol 44(1) (Reissue) PARA 1296 et seq, 1525.

3 Solicitors Act 1974 s 89(4).

4 Solicitors Act 1974 s 89(6). Similarly, references in any enactment or instrument to the disciplinary committee constituted under the Solicitors Act 1957 s 46 (repealed) are to be construed as references to the Solicitors Disciplinary Tribunal (Solicitors Act 1974 s 89(5)), and references in any enactment to a duly certificated notary public are to be construed as references to a duly certificated notary public within the meaning of the Solicitors Act 1974 (see s 87(1) (definition prospectively repealed); and PARA 1412) (s 89(7) (prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 76, Sch 23)).

Throughout the Solicitors Act 1974 the Law Society is referred to as the 'Society'; this term is defined as meaning 'the Law Society, that is to say, the Society incorporated and regulated by the Royal Charter dated 26 February 1845 together with the supplementary charters dated respectively 26 November 1972, 4 June 1903, 2 June 1909 and 10 March 1954': see the Solicitors Act 1974 s 87(1). However many of the functions of the Law Society are now carried out by other bodies: see PARA 603.

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(ii) Organisation of Representation and Regulation

A. INTRODUCTION

603. Overview.

The representative organisation of solicitors¹ is the Law Society², which is incorporated as a legal entity under royal charter³. The Law Society's regulatory functions have been devolved to the Solicitors Regulation Authority⁴. The Solicitors Disciplinary Tribunal was established independent of the Society and the Authority⁵.

Until a day to be appointed client complaints are dealt with by the Legal Complaints Service⁶ with an overall power to investigate complaints existing with the Legal Services Ombudsman⁷. As from a day to be appointed client complaints will be dealt with by the Office for Legal Complaints⁸ and overall regulation will be with the Legal Services Board⁹.

1 For the history of the Law Society and of the earlier organisations of solicitors, established after the decay of the Inns of Chancery, starting with that of the Society of Gentlemen Practisers in the Courts of Law and Equity founded in 1739, see the Handbook of the Law Society (1938) 1 et seq; and David Sugarman *A Brief History of the Law Society* (1995) (published by the Law Society to mark the 150th anniversary of the granting of the Charter of 1845).

2 The original name of the Society founded in 1826 was 'The Society of Attorneys, Solicitors, Proctors and others, not being Barristers, practising in the Courts of Law and Equity in the United Kingdom': Charter of 1845 cl 1. The Society afterwards came to be known as the Incorporated Law Society (Solicitors Act 1860 s 1 (repealed)), and the name the 'Law Society' was substituted by the Supplemental Charter of 1903.

3 See PARA 604 text and note 1.

4 See the Law Society Press Release dated 17 July 2008. As to the Solicitors Regulation Authority see PARA 619.

5 The Tribunal was established by the Solicitors Act 1974 s 46 (see PARA 906).

6 As to the Legal Complaints Service see PARA 632.

7 As from a day to be appointed the office of Legal Services Ombudsman is abolished: see the Legal Services Act 2007 s 159(2); and PARA 423. As to the Legal Services Ombudsman see PARA 424 et seq.

8 See PARA 442 et seq.

9 See PARA 303 et seq.

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B. THE LAW SOCIETY

(A) THE CONSTITUTION OF THE LAW SOCIETY

604. Royal Charters.

The Law Society is incorporated as a legal entity under a Royal Charter of 1845 and Supplemental Charters of 1872, 1903, 1909 and 1954¹. It is a body corporate with a common seal² and perpetual succession³, and is empowered⁴ to acquire, hold, sell⁵, grant, demise, exchange, dispose of or mortgage any estate or interest in land⁶.

The Council of the Law Society may, by resolution passed by not less than two-thirds of the members present and voting at a meeting of the Council and subsequently confirmed by a like number of members at a special general meeting, alter, amend or add to any of the provisions of the Charter of 1845 or any of the supplemental charters subject to approval by Her Majesty, her heirs or successors in Council⁷.

1 A Royal Charter is in effect legislation made by the Sovereign under the Royal Prerogative. It needs no approval by Parliament. The Charter of 1845 repealed and replaced the Society's first Royal Charter of 1831. For the Charter of 1845 and supplemental charters see the Law Society website accessible at the date at which this volume states the law at www.lawsociety.org.uk.

2 Charter of 1845 cll 1, 2. As to the Royal Charter by which the Law Society is incorporated see PARA 603.

3 Charter of 1845 cl 3.

4 Supplemental Charter of 1954 cl 15, revoking and replacing the Charter of 1845 cl 4.

5 No sale of the Law Society's Hall in Chancery Lane, London, may be made without the approbation and concurrence of a general meeting of members: Supplemental Charter of 1954 cl 15.

6 Supplemental Charter of 1954 cl 15.

7 Supplemental Charter of 1954 cl 18.

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605. General meetings.

A general meeting of the members of the Law Society must be held once a year¹ on a date and at a place fixed by the Council of the Law Society, for the purpose of the taking of the Chair², the approval of the minutes of the previous general meeting, the declaration of persons elected as members of the Council³, the reception of the annual report of the Council, the approval of the audited accounts⁴ and disposing of business introduced by the Council, motions⁵ and any other matter which may, consistently with the charters and byelaws, be introduced at such a meeting⁶.

A special general meeting may be called at any time by the Council⁷ and a special general meeting must also be called by the Council on a written requisition signed by 100 or more members and addressed to the chief executive⁸. If the Council fails to call such meeting within the time allowed then any ten of the requisitioners may fix a day and require the chief executive to call the meeting⁹.

The members in general meeting may make byelaws, rules, orders and ordinances for the regulation and government of the Society¹⁰ including the procedure for the election of members of its Council, the fixing of the fees, subscriptions and other sums to be paid by honorary members and associate members of the Society and the time or periods in respect of which such fees, subscriptions and other sums are to be payable so far as such are not inconsistent with the express provisions of any statute or charter of the Society¹¹, and for carrying out its purposes¹², and, in pursuance of powers conferred by the byelaws¹³ and by the Solicitors Act 1974, regulations have been made by the Council¹⁴.

1 Charter of 1845 cl 13. As to the Council of the Law Society see PARA 609 et seq. For the byelaws relating to annual general meetings see Byelaws 12, 13, 15-17, 25-37. As to the Royal Charter by which the Law Society is incorporated see PARA 604.

2 Ie under Byelaw 26.

3 As to the election of members of the Council see Byelaws 41-67A.

4 As to the audited accounts see Byelaws 79, 80, 84, 85.

5 Ie motions under Byelaw 15(1), the text of which has been published under Byelaw 16(2).

6 Byelaw 17(1).

7 Byelaw 18; and see Charter of 1845 cl 13. For the byelaws relating to special general meetings generally see Byelaws 18-24.

8 Byelaw 19(1).

9 Byelaw 20.

10 Charter of 1845 cl 12.

11 Supplemental Charter of 1954 cl 13. No entrance fees or subscriptions are payable by honorary members of the Society: cl 8. The annual subscription payable by members is fixed from time to time by the Council of the Law Society: see the Solicitors Act 1974 s 77(1); and PARA 606.

12 The purposes of the Society are set out by recital only, namely 'promoting professional improvement and facilitating the acquisition of legal knowledge': Charter of 1845.

13 The current byelaws are those adopted at a general meeting of members held on 15 July 1993.

14 The current general regulations are those made on 19 March 2008 (the 'Law Society's General Regulations 2008').

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(B) MEMBERSHIP OF THE LAW SOCIETY

606. Membership generally.

No limit is placed by the charters on the number of members of the Law Society, and the Council of the Law Society may appoint and elect to be a member any person whose name is for the time being on the roll, whether or not he has held a practising certificate¹. Membership is voluntary². Honorary membership is also conferred by the Council from time to time³.

Members of the Society may be divided into different classes⁴ and may be required to pay different amounts to the Society and over different periods according to the class of membership held⁵. The amount of the annual subscription is fixed by the Council⁶, which may from time to time vary the amount payable by members or by the different classes of members⁷.

1 Solicitors Act 1974 s 76(1) (s 76 repealed as from a day to be appointed by the Legal Services Act 2007 ss 177, 210, Sch 16 Pt 1, paras 1, 70, Sch 23. At the date at which this volume states the law no such day had been appointed). Where a person is so appointed and elected, he becomes a member of the Society on payment of any annual subscription payable under s 77 (see the text and notes 4-7) and is subject to any byelaw or regulation for the time being affecting members of the Society: s 76(2)(a), (b). As to the keeping of the roll see PARA 662. Under the Charter of 1845, Solicitors in Ireland, Northern Ireland and Scotland are also eligible for membership: cl 1. Registered European lawyers who are registered with the Law Society in accordance with EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained are also eligible for membership: Byelaw 1(1). For the procedure for election and admission of members see Byelaw 1. As to byelaws see PARA 605 note 13. As to practising certificates see PARA 667 et seq.

2 Provision formerly made for the introduction of compulsory membership has been repealed: see the Solicitors Act 1957 s 75 (repealed by the Solicitors (Amendment) Act 1974 s 19(5), Sch 3 Pt I).

3 See Byelaw 10; and PARA 607.

4 Solicitors Act 1974 s 77(2)(a) (s 77 repealed as from a day to be appointed by the Legal Services Act 2007 ss 177, 210, Sch 16 Pt 1, paras 1, 70, Sch 23. At the date at which this volume states the law no such day had been appointed).

5 See the Solicitors Act 1974 s 77(2)(b) (as prospectively repealed: see note 4).

6 Solicitors Act 1974 s 77(1) (as prospectively repealed: see note 4).

7 Solicitors Act 1974 s 77(2)(c) (as prospectively repealed: see note 4).

UPDATE

606 Membership generally

TEXT AND NOTES--Repeal of these provisions in force 31 March 2009: SI 2009/503.

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607. Honorary and associate membership.

The constitution of the Law Society also provides for the election of additional classes of persons, namely honorary members of the Council, and honorary members, associate members and affiliates of the Society, all of whom are to be regarded as non-corporate members¹.

Honorary members of the Council are such persons as may be so elected by the Council of the Law Society for such period or periods as the Council thinks fit, on account of their distinction and eminence².

Honorary members of the Society are persons elected as such by the Council, for such period as the Council thinks fit, who are lawyers in any jurisdiction who are neither otherwise eligible for election as members of the Society nor members of the English bar ordinarily resident in England and Wales, or persons, whether or not solicitors, who have rendered distinguished service to the Society or to the law, or who are able to assist the Society in promoting its objects, or who are otherwise deserving of recognition by the Society on account of their distinction or eminence³.

An associate member of the Society is a person elected as such by the Council, who is a trainee solicitor⁴. An associate member is not a member⁵.

The Council alone is empowered to decide conclusively whether an applicant has or has not fulfilled the conditions applicable to membership in any particular case⁶.

Except as mentioned previously, the terms of admission, rights, privileges and obligations, including liability to expulsion or suspension, of honorary members of the Council and of honorary members and associate members of the Society are such as the byelaws prescribe⁷. The powers given to a general meeting by the Charter of 1845 of ordaining and making byelaws, rules, orders and ordinances for the regulation and good government of the Society and of the members and affairs of the Society have been extended so as to enable the ordaining and making of such byelaws, rules, orders and ordinances with respect to membership⁸. In exercise of this power byelaws have been made.

1 Supplemental Charter of 1954 cl 5.

2 Byelaw 9(1). Honorary members of the Council do not pay any entrance fee or annual subscription: Byelaw 9(1). The privileges of honorary members of the Council are decided by the Council: Byelaw 9(2). As to byelaws see PARA 605 note 13.

3 Byelaw 10(1). Honorary members of the Society do not pay any entrance fee or annual subscription: Byelaw 10(1). The privileges of honorary members of the Society are decided by the Council: Byelaw 10(2).

4 Byelaw 4. No person remains an associate member after qualification as a solicitor: Byelaw 4.

5 Byelaw 95(1).

6 Supplemental Charter of 1954 cl 11.

7 Supplemental Charter of 1954 cl 12.

8 Supplemental Charter of 1954 cl 13.

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608. Exclusion of members and loss of rights.

A member of the Law Society ceases to be a member:

- 600 (1) on resignation; or
- 601 (2) if his name is removed from or struck off the roll of solicitors¹; or
- 602 (3) if he is expelled for unfitting conduct by resolution of a general meeting of members²; or
- 603 (4) if he is expelled by resolution of the Council in its discretion where:
500
 - 1. (a) he is an undischarged bankrupt or has entered into a deed of arrangement with his creditors³;
 - 2. (b) he has been suspended from practice⁴;
 - 3. (c) he lacks mental capacity⁵;
 - 4. (d) he has not paid a penalty or costs when so ordered by the Solicitors Disciplinary Tribunal⁶;
 - 5. (e) he has had an order made against him for the issue of a writ of attachment⁷;
 - 6. (f) he has had his registration as a European lawyer suspended or
501 revoked⁸.

If subscriptions are payable for membership, such member would, if expelled by virtue of the above, be liable for any outstanding subscription⁹.

A member who has been suspended from practising as a solicitor becomes disentitled to any of the rights or privileges of membership¹⁰, and, by resolution of the Council, a member may be suspended from using the hall and library and any of the Society's rooms and from the exercise of all other rights and privileges for such period as the Council thinks fit, for any cause which it may think renders the suspension necessary or expedient but is not of a nature to justify the making of a complaint by or on behalf of the Law Society to the Solicitors Disciplinary Tribunal¹¹. On giving the requisite notice, any member who has been suspended may appeal to the next available general meeting of members, which may confirm, rescind or vary the period of the suspension in any way that meeting thinks fit¹².

1 Solicitors Act 1974 s 78(1) (s 78 repealed as from a day to be appointed by the Legal Services Act 2007 ss 177, 210, Sch 16 Pt 1, paras 1, 70, Sch 23. At the date at which this volume states the law no such day had been appointed). As to removal from the roll see further PARA 662.

2 Byelaw 8. As to the procedure on exclusion for misconduct see Byelaw 8(1), (2).

3 Byelaw 8(3)(a).

4 Byelaw 8(3)(b).

5 See Byelaw 8(3)(c). The Byelaws refer to the Mental Health Act 1983 Pt VII (ss 93-113) (repealed), but it is assumed that the relevant provisions are now those of the Mental Capacity Act 2005: see **MENTAL HEALTH**.

6 Byelaw 8(3)(d); and see the Solicitors Act 1974 s 47(2); and PARA 909. As to the Tribunal see PARA 906.

- 7 Byelaw 8(3)(e). Attachment is now obsolete: see PARA 761 note 2.
- 8 Byelaw 8(3)(f). As to registration as a European lawyer see PARA 534 et seq.
- 9 Byelaw 8(3).
- 10 Solicitors Act 1974 s 78(2) (as prospectively repealed: see note 1).
- 11 Solicitors Act 1974 s 78(3) (as prospectively repealed: see note 1). At least 16 members of the Council must be present at the meeting at which the suspension is resolved on, and at least 12 members of the Council present must consent to the suspension: s 78(4).
- 11 Solicitors Act 1974 s 78(5) (as prospectively repealed: see note 1). The appeal is by motion (Byelaw 7(2)), notice of which must be served on the chief executive within 14 days after the sending of notice of the suspension (Byelaw 7(1)-(3)), and must be accompanied by a statement of grounds of appeal (Byelaw 7(3)).

UPDATE

608 Exclusion of members and loss of rights

TEXT AND NOTES--Repeal of these provisions in force 31 March 2009: SI 2009/503.

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(C) THE COUNCIL OF THE LAW SOCIETY

609. The constitution of the Council.

The Law Society is governed by a president, and a vice-president and a Council, elected from members practising in England and Wales¹ and from non-practising members², consisting of between 100 and 105 persons³. Sixty-one of the members are elected by geographical constituency, 39 are elected on a national basis, and up to five may be lay persons selected by the Master of the Rolls⁴.

Members of the Council hold office for a period of four years or, where they have been elected to fill a casual vacancy, until the expiration of the term of office of their predecessor⁵. Members of the Council are eligible for re-election⁶.

The Council may suspend any member for up to 90 days if it sees occasion to do so⁷ and must convene a special meeting of the members of the Society to decide on his removal⁸.

1 Charter of 1845 cl 8. In practice the Council now proposes a deputy vice-president to the annual general meeting of the Society and the three office holders operate as a triumvirate. No mention is made in the Charters of the office of deputy vice-president but only in the Byelaws: see PARA 612.

2 Solicitors Act 1974 s 76(2)(c) (s 76 repealed as from a day to be appointed by the Legal Services Act 2007 ss 177, 210, Sch 16 Pt 1, paras 1, 70, Sch 23. At the date at which this volume states the law no such day had been appointed).

3 Byelaw 38.

4 Byelaw 38. As to the election of members see PARA 610.

5 Byelaw 42. As to the causes of vacation of office see Byelaw 40(1). Where a vacancy occurs it must be filled by election to be held on a date fixed by the Council: see Byelaw 41.

6 See Byelaw 44.

7 See Byelaw 68(1). At least 25 Council members must be present and 20 consent to the suspension, while the suspended member must be given reasonable notice and the opportunity to respond to the matter raised: see Byelaw 68(2). Such suspension automatically acts to suspend a member from acting as an officer of the Council: see Byelaw 68(3). The Council may extend the suspension: see Byelaw 68(4).

8 See Byelaw 69.

UPDATE

609 The constitution of the Council

NOTE 2--Day appointed is 31 March 2009: SI 2009/503.

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610. Election of Council members.

For the purposes of elections to the Council of the Law Society, England and Wales are divided into 42 constituencies each with an allocated number of Council members¹. Not less than two nor more than ten eligible members of the Law Society may nominate any other eligible member for election to the Council in respect of their constituency².

If the last date for receipt of nominations has passed without any nominations having been received by the chief executive, a nomination committee must be established in the constituency. Its task is to secure the nomination of sufficient candidates to fill any vacancies and to assist members to make a choice between candidates³. The byelaws lay down procedures for preliminary notice of Council elections and for a poll in respect of contested elections⁴.

The seats to be filled on a national basis bear a designation denoting the sector of the profession, type of solicitor or area of legal practice to be represented by the member filling that seat⁵.

Provision is also made for the withdrawal of nominations and the death of a candidate⁶.

Each Council member, when first elected must complete a programme of equality and diversity training approved by the Council⁷.

These provisions and other such matters are regularly reviewed by the Law Society⁸.

1 Byelaw 48, Appendix. As to byelaws see PARA 605 note 13.

2 Byelaw 53. As to eligibility see Byelaw 49; as to the form of nomination see Byelaw 54; and as to the term of office where there is a contested election see Byelaw 43.

3 See Byelaw 55. As to the constitution of the selection committee see Byelaw 55.

4 See Byelaws 56-65. Accidental omission to dispatch any notice or voting paper to a member at his registered address does not invalidate an election: Byelaw 51.

5 See Byelaw 66. As to the procedure to be followed in the event of the election of a member on a national basis see Appendix 3. Where a casual vacancy arises the Council must fill it as soon as practicable: see Byelaw 67.

6 See Byelaw 67A.

7 See Byelaw 67B.

8 Ie by the Byelaws Revision Committee.

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611. Meetings of the Council, and the common seal.

The Council of the Law Society may make regulations for its meetings and proceedings, for the appointment of committees, and generally for the management of the Society¹. Minutes of the proceedings of every meeting of the Council must be taken and signed by the chairman of that or the next meeting². A record showing how many times each member of the Council has attended meetings must be made available to any member of the Society on request³. Reasonable travelling and out-of-pocket expenses are paid out of the Society's funds to members of the Council and committee members for attendance at meetings or otherwise being engaged in the Society's business⁴.

The Council has custody of the common seal of the Society which must be used only by the Authority of the Council⁵.

1 See Byelaw 70(1). The regulations must be consistent with statute, the Charter of 1845 (see PARA 604), and Byelaws (as to byelaws see PARA 605 note 13): Byelaw 70(1). They must also provide for the appointment of a committee to keep the size of the Council and related matters under review, and an audit committee: see Byelaw 70(3), (4). As to the management of the Society see PARA 613.

2 Byelaw 71.

3 Byelaw 72.

4 Byelaw 73.

5 Byelaw 86(1). Every document to which the common seal is applied must be signed by a member of the Council and countersigned by the chief executive or by a second member and must be recorded in the register: Byelaw 86(2).

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612. The president, vice-president and deputy vice-president.

The deputy vice-president is elected by the solicitor-members of the Council from among themselves¹. The name of the candidate so elected must be published as soon as practicable following the completion of the election procedure². The deputy vice-president holds office for one year and takes office at the conclusion of the annual general meeting immediately following his election³. The deputy vice-president automatically succeeds to the office of vice-president at the conclusion of his term of office, and the vice-president automatically succeeds to the office of president at the conclusion of his term of office⁴. Where a casual vacancy occurs, the then lower office holder will succeed immediately to the higher office. Where this succession is declined, the office must be offered to the next in line, and if all lower office holders decline, or it is the office of deputy vice-president that has become vacant, then the Council must elect one of their members to hold the office until the next annual general meeting⁵.

Automatic succession to an office does not apply where the person holding the office of president has succeeded to that office on filling a casual vacancy later than a date six months after the immediately preceding annual general meeting, and in that event those persons holding the offices of president, vice-president and deputy vice-president at the date of the annual general meeting must continue to hold those offices respectively until the conclusion of the next following annual general meeting⁶.

The Council may permit the president or vice-president to reside in any premises belonging to the Society⁷. During the terms of office of the president, vice-president and deputy vice-president, monetary compensation is payable to their firms or employers⁸.

1 See Byelaw 74(1)(i). As to byelaws see PARA 605 note 13. As to the constitution of the Council see PARAS 609-610.

2 See Byelaw 74(1)(ii). If, within the period of 14 days following such publication, 500 members so demand in writing addressed to the Chief Executive, a ballot must be held for the office of deputy vice-president, in which every member is eligible to vote. Additional candidates may be nominated in the written demand. The procedure and timetable for the ballot are decided by the Council. If no demand such as is mentioned in this sub-paragraph is received within the period of 14 days, the election by the Council is final: Byelaw 74(1)(ii).

3 See Byelaw 74(1)(iii). Alternatively his term of office may commence on the day following completion of any ballot demanded by the members of the Law Society under Byelaw 74(1)(ii) (see note 2): see Byelaw 74(1)(iii).

4 See Byelaw 74(2), (3). The Council may pass a resolution requiring an election to be held: see Byelaw 74(4).

5 See Byelaw 77. Where a person succeeds to a casual vacancy he must be treated as if he had automatically succeeded to the position: see Byelaw 74(5), (6).

6 Byelaw 74(7). As to the annual general meeting see PARA 605.

7 See Byelaw 78.

8 See Byelaw 73A.

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(D) THE MANAGEMENT OF THE LAW SOCIETY

613. The Council's powers of management.

Subject to the provisions of the charters and of the byelaws for the time being in force, the management of the affairs of the Law Society is vested in the Society's Council¹.

Subject to any provision to the contrary made by or under any other enactment² the Council may arrange for any of its functions³ to be exercised by:

- 604 (1) a committee of the Council⁴;
- 605 (2) a sub-committee of such a committee⁵;
- 606 (3) a body corporate which is established for the purpose of providing services to the Council (or any committee of the Council) and is a wholly-owned subsidiary⁶ of the Society⁷; or
- 607 (4) an individual (whether or not a member of the Society's staff)⁸.

Arrangements made under this section in respect of a function may provide that the function is to be exercised in accordance with the arrangements only (and not by the delegating body)⁹. Any power given by the foregoing provisions¹⁰ may be exercised so as to impose restrictions or conditions on the body or individual by whom the function is to be discharged¹¹.

A committee or sub-committee may include or consist of individuals other than members of the Council, or the Society, or solicitors¹². A sub-committee may also include or consist of individuals other than members of the committee¹³. The Council may make arrangements for the appointment and removal of members of any committee to be made other than by itself¹⁴. A committee or sub-committee may regulate its own procedure, including quorum¹⁵.

1 Charter of 1845 cl 11; Solicitors Act 1974 s 80(1) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 16; and the Legal Services Act 2007 s 177, Sch 16 Pt 1 paras 1, 72(a)). As to byelaws see PARA 605 note 13.

2 Solicitors Act 1974 s 79(15) (s 79 substituted by the Legal Services Act 2007 s 177, Sch 16 Pt 1 paras 1, 71).

3 Including any function exercisable by virtue of the Solicitors Act 1974 s 80 (see PARA 613): s 79(1)(a) (as substituted: see note 2).

4 Solicitors Act 1974 s 79(1)(a) (as substituted: see note 2). Where any function may be discharged by a committee, the committee may arrange for the discharge of the function by (1) a sub-committee of that committee (in which case see also note 5); (2) a body corporate which is established for the purpose of providing services to the Council (or any committee of the Council) and is a wholly-owned subsidiary of the Society, or (3) an individual (whether or not a member of the Society's staff): s 79(2) (as so substituted). Section 79(2) has effect subject to any contrary direction given by the Council: s 79(6) (as so substituted).

5 Solicitors Act 1974 s 79(1)(b) (as substituted: see note 2). Where any function may be discharged by a sub-committee, that sub-committee may arrange for the discharge of the function by an individual (whether or not a member of the Society's staff): s 79(3) (as so substituted). Section 79(3) has effect subject to any contrary direction given by the Council (or, where the function has been delegated by a committee, the committee): s 79(6), (7) (as so substituted).

6 Until the Companies Act 2006 s 1159 comes into force for all purposes, the reference to 'wholly owned subsidiary' is to be read as a reference to that term as defined in the Companies Act 1985 s 736 (see **COMPANIES** vol 14 (2009) PARA 25): Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, art 7(2). As from the day the Companies Act 2006 s 1159 comes into force for all purposes 'wholly-owned subsidiary' has the meaning given by that section: Solicitors Act 1974 s 79(14) (as substituted: see note 2). At the date at which this volume states the law the Companies Act 2006 s 1159 had not been brought into force for all purposes.

7 Solicitors Act 1974 s 79(1)(c) (as substituted: see note 2).

8 Solicitors Act 1974 s 79(1)(d) (as substituted: see note 2).

9 Solicitors Act 1974 s 79(4) (as substituted: see note 2). 'Delegating body' means, in the case of arrangements under s 79(1) (see text and notes 2-8), the Council; in the case of arrangements under s 79(2) (see note 3), the committee; and, in the case of arrangements under s 79(3) (see note 5), the sub-committee: s 79(5) (as so substituted).

10 In the Solicitors Act 1974 s 79(1)-(3) (as substituted: see note 2) (see text and notes 1-8).

11 Solicitors Act 1974 s 79(8) (as substituted: see note 2).

12 Solicitors Act 1974 s 79(9) (as substituted: see note 2).

13 Solicitors Act 1974 s 79(10) (as substituted: see note 2).

14 Solicitors Act 1974 s 79(11) (as substituted: see note 2).

15 Solicitors Act 1974 s 79(12) (as substituted: see note 2). The validity of any proceedings of a committee or sub-committee is not affected by any vacancy among its members: s 79(13) (as so substituted).

UPDATE

613 The Council's powers of management

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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614. Power to use the Society's general funds.

The Council of the Law Society may apply the general funds of the Law Society in promoting, advancing or protecting the objects of the Society, and, without prejudice to the generality of those words:

- 608 (1) in providing and maintaining a site or sites for or premises for use as a hall, library, offices, reading rooms, refreshment rooms or otherwise for the use of members or for any purposes of the Society as the Council considers desirable;
- 609 (2) in maintaining a library or libraries for the use of members and of trainee solicitors¹;
- 610 (3) in remunerating the officers and servants of the Society or providing pensions or gratuities to former officers and servants or their dependants or in making other provision for them;
- 611 (4) in paying reasonable sums for the expenses of officers of the Society or members of the Council incurred in respect of the business of the Society or of any person, whether a member of the Society or not, who has rendered special services to the Society;
- 612 (5) in paying reasonable sums to compensate the president, vice-president and deputy vice-president, and members of the Council of the Society, such sums to be paid either directly to the president, vice-president, deputy vice-president and members of the Council of the Society or to their firms or employers;
- 613 (6) in making gifts or contributions for national, public, educational or charitable purposes;
- 614 (7) in making grants to universities or other educational establishments, in providing schools of law, lectures, classes or other tuition, in making grants for them, in establishing bursaries, scholarships or exhibitions, in giving prizes or in otherwise promoting or furthering the interests of members or prospective members of the Society;
- 615 (8) in making grants or other contributions or paying subscriptions to international, national or local legal societies or to organisations having objects analogous to those of the Society or the support of which will, in the Council's opinion, benefit the Society or its members;
- 616 (9) in publishing or distributing books, pamphlets or journals relating to the affairs or interests of the Society or promoting or advancing the interests, usefulness and efficiency of members of the Society; and
- 617 (10) in otherwise, in any manner consistent with the charters and byelaws, promoting, advancing or protecting the interests, usefulness and efficiency of the solicitors' branch of the legal profession and the members of the Law Society².

1 Trainee solicitors are referred to in the Supplemental Charter of 1954 as 'articled clerks'.

2 Supplemental Charter of 1954 cl 16.

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615. Power to enter into alliances with other societies.

The Council of the Law Society may, on such terms and conditions and for such period or periods as it thinks fit, admit into alliance with the Law Society any Society established anywhere in the British Commonwealth (except in England or Wales) the principal objects of which are analogous to those of the Law Society. During the continuance of the alliance, such a Society is entitled to be described as being in alliance with the Law Society in England, and its members are entitled to such privileges (including admission to the hall, library, reading rooms, refreshment rooms and other rooms of the Law Society, attendance at meetings and use of the facilities of that Society) as, subject to any provisions of the byelaws, the Council thinks fit¹.

1 Supplemental Charter of 1954 cl 17.

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616. Employment of staff.

The Council of the Law Society may appoint and remove a chief executive and other staff, and may prescribe their respective duties, pay them such salaries as the Council thinks fit, and permit them to live in any of the Society's premises, and may allocate to their use such accommodation as the Council thinks fit¹.

1 Charter of 1845 cl 11; Byelaws 87-89.

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617. Documents and evidence.

Any document issued by the Law Society or the Council of the Law Society for any purpose whatsoever may be signed on behalf of the Society or the Council by the secretary¹ or by such other officer, or by the person holding such office in the Society, as may be prescribed either generally or specially by the Council². A certificate under the hand of the secretary is, until the contrary is proved, evidence that a solicitor has or has not, as the case may be, delivered to the Society an accountant's report³ or supplied any requisite⁴ evidence⁵.

1 'Secretary' of the Law Society includes any deputy or person appointed temporarily to perform the duties of that office: Solicitors Act 1974 s 87(1).

2 Solicitors Act 1974 s 80(2) (repealed as from a day to be appointed by the Legal Services Act 2007 ss 177, 210, Sch 16, Pt 1, paras 1, 72(b), Sch 23. At the date at which this volume states the law no such day had been appointed). In any proceedings, a document purporting to be certified by the secretary as a copy of a resolution passed by the Council or a committee or sub-committee of the Council on a specified date is evidence that that resolution was duly passed on that date: Solicitors Act 1974 s 80(3) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 16).

3 As to the obligation to deliver such a report see the Solicitors Act 1974 s 34(1); and PARA 847.

4 Ie any evidence required under Solicitors Act 1974 s 34 or any rules made under it: see PARA 847 et seq.

5 Solicitors Act 1974 s 34(7) (repealed as from a day to be appointed by the Legal Services Act 2007 ss 177, 210, Sch 16, Pt 1, paras 1, 35(1), (4), Sch 23. At the date at which this volume states the law no such day had been appointed).

UPDATE

617 Documents and evidence

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTES 2, 5--Day appointed is 31 March 2009: SI 2009/305.

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618. Representation on other bodies.

The Law Society is entitled to be consulted before any of its members who are eligible are appointed to serve on the Civil Procedure Rule Committee¹ or the Crown Court Rule Committee². The Society is entitled to be represented on the remuneration committee under the Solicitors Act 1974³ by the president of the Society⁴ and the president of a local law society⁵.

The Law Society is also represented on various other bodies including the governing bodies of certain universities and university colleges and on the Incorporated Council of Law Reporting of England and Wales.

Acting closely with, yet independent of, the Law Society, are 122 local law societies and eight associations of grouped law societies⁶. These societies have received statutory recognition in the rights of representation on the committees previously mentioned⁷.

1 See the Civil Procedure Act 1997 s 2(2)(e), (f), (4); and **CIVIL PROCEDURE** vol 11 (2009) PARA 25.

2 See the Supreme Court Act 1981 s 86(1)(f), (g), (4); and **COURTS** vol 10 (Reissue) PARA 577. As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

3 See under the Solicitors Act 1974 s 56(1): see PARA 936.

4 As to the president of the Law Society see PARA 612.

5 Solicitors Act 1974 s 56(1)(d), (e); and PARA 936. 'Local law society' means a society which is for the time being recognised by the Council of the Law Society as representative of solicitors in some particular part of England and Wales: s 87(1).

6 The earliest provincial society was the Bristol Incorporated Law Society, which was founded in 1770 and incorporated under the Companies Act 1877 (repealed). The oldest of the London societies is the Worshipful Company of Solicitors of the City of London, founded in 1908, which became a livery company in May 1944, and received a royal charter in June 1957. As to the livery companies see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1305 et seq.

7 Eg the remuneration committee: see the text and note 5.

UPDATE

618 Representation on other bodies

NOTE 2--Day appointed is 1 October 2009: SI 2009/1604.

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C. SOLICITORS REGULATION AUTHORITY

619. Introduction.

As from a day to be appointed¹ the Law Society is an approved regulator² and is under a duty to ensure that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions³. However, in practice many of the regulatory powers of the Law Society have been devolved to the Solicitors Regulation Authority and consequently the Authority is responsible for several functions previously dealt with by the Law Society⁴.

Solicitors are under a duty to co-operate with the Authority in an open, prompt⁵ and co-operative way⁶ and to report to the Authority cases of serious misconduct by a solicitor, firm or registered European lawyer⁷, a registered foreign lawyer⁸ or if such a person, or firm, is under serious financial difficulties⁹. A solicitor must not try to hinder, prevent or victimise a person who wishes to report his conduct to the Authority¹⁰. Nor may a solicitor enter into agreements attempting to preclude investigations by the Authority¹¹.

1 The Legal Services Act 2007 s 30 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 See the Legal Services Act 2007 Sch 4 para 1(1); and PARA 358 et seq. The Law Society is also a qualifying regulator for the purposes of the Immigration and Asylum Act 1999 Pt 5 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**) (see the Legal Services Act 2007 Sch 18 para 2). As to the meaning of 'approved regulator' see PARA 358.

3 See the Law Society Press Release dated 17 July 2008. See also PARA 374.

4 See PARA 662 et seq.

5 Where the Authority has given notice in writing requesting the production of documents and information a solicitor is under a duty to comply promptly with the notice: see the Solicitors' Code of Conduct 2007 r 20.06.

6 Solicitors' Code of Conduct 2007 r 20.03(1). Rule 20 also applies to an overseas practice: see r 15.20.

7 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

8 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

9 See the Solicitors' Code of Conduct 2007 r 20.04. However a solicitor should only issue defamation proceedings in respect of a complaint to the Authority if he can properly allege malice: see r 20.05(4).

10 See the Solicitors' Code of Conduct 2007 r 20.05(1), (2).

11 See the Solicitors' Code of Conduct 2007 r 20.05(3).

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619 Introduction

NOTES 6, 9--Solicitors' Code of Conduct 2007 r 15.20 amended on 31 March 2009, r 20.04 amended on 1 July 2009.

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620. Training.

The Solicitors Regulation Authority¹ may make regulations ('training regulations') about education and training for persons seeking to be admitted or to practise as solicitors².

1 The Solicitors Act 1974 s 2 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the training of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 See the Solicitors Act 1974 s 2(1); and PARA 637.

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621. The keeping of the roll and the practising certificate register.

The Solicitors Regulation Authority¹ is required to keep a list of all solicitors of the Supreme Court², called the 'roll'³.

In addition to keeping the roll of all solicitors⁴, the Authority must maintain a register relating to practising certificates⁵. For the purpose of facilitating the service of notices and other documents, every solicitor who has in force, or has applied for, a practising certificate must give notice to the Authority of any change in his place or places of business before the expiration of 14 days from the date on which the change takes effect⁶.

¹ The Solicitors Act 1974 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the keeping of the roll and the practising certificate register is the Solicitors Regulation Authority (see PARA 619).

² As from a day to be appointed the words 'Senior Courts' are substituted for the words 'Supreme Court' by the Constitutional Reform Act 2007 Sch 11 para 2(1), (2).

³ See the Solicitors Act 1974 s 6(1); and PARA 662.

⁴ See PARA 662 et seq.

⁵ Until a day to be appointed this is a register of solicitors who apply for the issue of a practising certificate and contains the applicant's full name, his place of business and the date of his admission: see the Solicitors Act 1974 s 9(1) (prospectively substituted); and PARA 668. However as from a day to be appointed the register is of all solicitors who hold practising certificates and contains the full name of each solicitor who holds a practising certificate, a statement, in relation to him, as to whether there is in force a sole solicitor endorsement and such other information as may be specified in regulations made under s 28(1)(d) (see PARA 671); see the Solicitors Act 1974 s 10A (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 10). As to the Authority's functions in connection with the issue of practising certificates see PARA 667 et seq. Until a day to be appointed the register may be kept by means of a computer and, if so kept, any entry must be made available for inspection in legible form during office hours, without payment, by any person who applies to inspect it: Solicitors Act 1974 s 9(2), (3) (prospectively substituted by the Legal Services Act 2007 Sch 16 paras 1, 9). If the register is not kept by means of a computer, any person may inspect it during office hours without payment: s 9(4) (so prospectively substituted). Until a day to be appointed, if in, or in relation to, an application for a practising certificate or a notice under s 84(1) any person makes any false statement material to the application or notice, a complaint in respect of that statement may be made to the Tribunal by or on behalf of the Authority: s 9(5) (so prospectively substituted). At the date at which this volume states the law no such days had been appointed. As to the evidential standing of the register see PARA 672.

⁶ See the Solicitors Act 1974 s 84(1). Any notice or other document required or authorised by or by virtue of the Solicitors Act 1974 to be served on any person may be served on him by delivering it to him, by leaving it at his proper address or by sending it by post: s 84(2). Any such notice or document may be served on a practising solicitor, without prejudice to any other method of service, by sending it in a registered letter addressed to him at any place specified as his place of business, or one of his places of business, in his latest application for a practising certificate or in any subsequent notice under s 84(1): s 84(3). There is a requirement to provide the Authority with the necessary information for the issuing of a practising certificate or the renewal of registration or recognition, as appropriate, and to notify the Authority of any changes to relevant information: see the Solicitors' Code of Conduct 2007 r 20.03(2). Rule 20 also applies to an overseas practice: see r 15.20.

UPDATE

621 The keeping of the roll and the practising certificate register

NOTE 5--Day appointed is 1 July 2009: SI 2009/1365.

NOTE 6--Solicitors' Code of Conduct 2007 r 15.20 amended on 31 March 2009.

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622. Requirement and powers to make rules.

The Solicitors Regulation Authority¹ is responsible for providing rules relating to:

- 618 (1) the professional practice, conduct, discipline (and as from a day to be appointed fitness to practise) of solicitors²;
- 619 (2) accounts and trust accounts³;
- 620 (3) the inspection of bank accounts kept by solicitors⁴;
- 621 (4) accountants' reports⁵;
- 622 (5) professional indemnity⁶;
- 623 (6) the compensation fund required to be maintained and administered by it, and the procedure for making grants from it⁷;
- 624 (7) training regulations about education and training for persons seeking to be admitted or to practise as solicitors⁸.

As from a day to be appointed⁹ rules made may also provide for any rules made under heads (1) to (4) above¹⁰ to have effect in relation to employees of solicitors with such additions, omissions or other modifications as appear to the Authority to be necessary or expedient¹¹.

1 The Solicitors Act 1974 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

2 See the Solicitors Act 1974 s 31; and PARA 828.

3 See the Solicitors Act 1974 s 32; and PARA 835.

4 See the Solicitors Act 1974 s 33A; and PARA 845.

5 See the Solicitors Act 1974 s 34; and PARAS 847-851.

6 See the Solicitors Act 1974 s 37(1); and PARA 853.

7 See the Solicitors Act 1974 ss 36, 36A; and PARAS 862-866.

8 See the Solicitors Act 1974 s 2(1); and PARA 637. Until a day to be appointed such rules are to be made with the concurrence of the Secretary of State, the Lord Chief Justice and the Master of the Rolls: s 2(1) (amended by SI 2003/1887 and relevant wording prospectively repealed by the Legal Services Act 2007 Sch 16, paras 1, 4(a), Sch 23). As to the provision that may be made see the Solicitors Act 1974 s 2(3); and PARA 637. Until a day to be appointed, where the Secretary of State approves any regulation such as is mentioned in s 2(1) under the Courts and Legal Services Act 1990 Sch 4 the requirement of the concurrence of the Lord Chief Justice and the Master of the Rolls does not apply, regardless of whether or not the regulation required to be approved under that Schedule: Solicitors Act 1974 s 2(4), (5) (added by the Courts and Legal Services Act 1990 Sch 17 para 8; amended by the Access to Justice Act 1999 Sch 6, paras 1, 2; and 2003/1887; and prospectively repealed by the Legal Services Act 2007 Sch 16, Pt 1, paras 1, 4(c), Sch 23). At the date at which this volume states the law no such day had been appointed.

9 The Solicitors Act 1974 ss 34A, 34B are added by the Legal Services Act 2007 Sch 16 paras 1, 36 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

10 Ie rules made under the Solicitors Act 1974 ss 13, 32, 33A, 34.

11 Solicitors Act 1974 s 34A(1) (prospectively added: see note 9). If any employee of a solicitor fails to comply with rules made under s 31 or s 32, as they have effect in relation to the employee by virtue of s 34(1), any person may make a complaint in respect of that failure to the Tribunal: s 34A(2) (as so prospectively added). If any employee of a solicitor fails to comply with rules made under s 34, as they have effect in relation to the employee by virtue of s 34(1), a complaint in respect of that failure may be made to the Tribunal by or on behalf of the Authority: s 34A(3) (as so prospectively added).

UPDATE

622 Requirement and powers to make rules

NOTE 8--Day appointed is 1 January 2010: SI 2009/3250.

TEXT AND NOTE 9--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(1) THE PROFESSION/(ii) Organisation of Representation and Regulation/C. SOLICITORS REGULATION AUTHORITY/623. Powers of intervention in solicitor's practice.

623. Powers of intervention in solicitor's practice.

The Solicitors Regulation Authority¹ has powers of intervention in a solicitor's practice², exercisable in relation to money, documents, mail and other forms of communication, and trusts connected with the practice³, in specified circumstances such as the solicitor's suspected dishonesty, his breach of accounts rules, his bankruptcy, his being struck off the roll or suspended from practice, or undue and unexplained delay in his dealing with a client's affairs⁴.

1 The Solicitors Act 1974 Sch 1 refers to the 'Society' or until a day to be appointed the 'Council' (ie the Law Society and the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 See the Solicitors Act 1974 s 35, Sch 1; and PARA 890 et seq.

3 See Solicitors Act 1974 Sch 1 paras 5-16; and PARA 891 et seq.

4 See Solicitors Act 1974 Sch 1 paras 1-4; and PARA 890. The Solicitors Regulation Authority also has power to intervene in the practice of a recognised body (see PARA 718) and in the practice or multi-national partnership of a registered foreign lawyer (see PARA 726). As to the meaning of 'recognised body' see PARA 687 note 3; as to the meaning of 'registered foreign lawyer' see PARA 628 note 2; and as to the meaning of 'multi-national partnership' see PARA 724 note 3. On the death of a sole solicitor the Solicitors Act 1974 Sch 1 paras 6-8 apply: Sch 1 para 2.

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624. Control of employment of employees and consultants.

The Solicitors Regulation Authority¹ has the power to make orders prohibiting the employment or remuneration of certain persons by solicitors and recognised bodies without the permission of the Authority².

1 The Solicitors Act 1974 s 43 and the Administration of Justice Act 1985 Sch 2 refer to the 'Society' (ie the Law Society (see the Solicitors Act 1974 s 87(1); and PARA 602 note 4) (definition applied in the case of the Administration of Justice Act 1985 by virtue of Sch 2 para 1(5))). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 See the Solicitors Act 1974 s 43; the Administration of Justice Act 1985 Sch 2 para 11 (prospectively repealed); and PARA 926 et seq.

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625. Bankrupt solicitors.

The Solicitors Regulation Authority¹ is entitled, without payment of any fee, to inspect the file of proceedings in bankruptcy relating to any solicitor (or recognised body²) against whom proceedings in bankruptcy have been taken³ and to be supplied with office copies of the proceedings on payment of the usual charge⁴.

1 The Solicitors Act 1974 Sch 1 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 See the Administration of Justice Act 1985 Sch 2 para 30; and PARA 717. As to the meaning of 'recognised body' see PARA 687 note 3.

3 Solicitors Act 1974 s 83(a).

4 Solicitors Act 1974 s 83(b).

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626. Recognition of EC professional qualifications.

The Solicitors Regulation Authority¹ is the competent authority for the solicitors' profession for the purpose of receiving and considering applications by applicants and taking the actions and decisions with regard to the recognition of professional qualifications in the European Community². The Authority must provide the Secretary of State with such information (including statistical information) as he may require concerning applications made by those seeking recognition of professional qualifications and the actions and decisions taken in respect of those applications³. Following a request by the European Commission, the Authority must inform the Secretary of State of the results of any inquiries⁴ with which it is dealing within two months of the date on which it receives such a request⁵.

1 The European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, refer to the Law Society. However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 See the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, regs 4(1), 5(1), Sch 1.

3 See the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 38(1).

4 In any inquiry referred to in the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 5(7)(b): reg 38(2).

5 See the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781, reg 38(2).

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627. Registration of European lawyers.

The Solicitors Regulation Authority¹ must maintain a register of European lawyers² which must include in respect of each registered European lawyer certain information³. The Authority may reject an application for initial registration if it is not satisfied that the applicant is eligible for registration or not a fit and proper person to practise in the United Kingdom⁴. Registration may be made subject to such conditions as the Authority thinks fit⁵. The Authority has the power to suspend a person's registration⁶ and, under certain circumstances⁷, cancel it⁸. However, subject to certain exceptions⁹ the Authority must not cancel a person's registration or restore a person to the register if disciplinary proceedings are pending against that person before the Supreme Court¹⁰ or the Solicitors Disciplinary Tribunal¹¹. The Authority must give reasons for any decision to refuse initial registration or renewal of registration, to impose a condition, to suspend a person's registration, to cancel a person's registration or to refuse to lift a condition, restore a person to the register, change a person's name on the register or cancel a person's registration¹².

There is a right of appeal to the Master of the Rolls¹³ by a person aggrieved by the Authority's decision to:

- 625 (1) refuse to register him, or renew his registration;
- 626 (2) imposed a condition on his registration, or refuse to lift a condition;
- 627 (3) suspend his registration;
- 628 (4) cancel or refuse to cancel his registration;
- 629 (5) refuse to restore him to the register; or
- 630 (6) refuse to change his name on the register¹⁴.

1 The European Lawyers Registration Regulations 2000 took effect on 22 May 2000 and were made by the Council of the Law Society with the concurrence of the Master of the Rolls under the Courts and Legal Services Act 1990 Sch 14 (see PARA 628 et seq) as extended by the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119 (see PARA 541 et seq) to implement EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained (see PARA 534): European Lawyers Registration Regulations 2000 regs 1, 2. Although these regulations refer to the Law Society, in practice the body currently responsible for the registration of European lawyers is the Solicitors Regulation Authority (see PARA 619).

2 This applies to the registration of EU lawyers under EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained, art 3 (see PARA 534 note 4). The renewal date for each registration is the date prescribed by the Authority and notified to the applicant: European Lawyers Registration Regulations 2000 reg 7. Any application under the European Lawyers Registration Regulations 2000 must be made in the form and accompanied by such further information as the Authority requires and there is a continuing duty on the applicant to keep the information updated: reg 13. All applications must be accompanied by the appropriate fees and contributions: see reg 14.

3 See the European Lawyers Registration Regulations 2000 reg 3. Any entry on the register must be made available for inspection: see reg 4. An application for registration must usually be signed by the applicant and an initial application must be accompanied by a certificate attesting to his registration with the competent authority in his home member state: see reg 5. A registered European lawyer whose name has changed may apply to the Authority to change his name on the register: reg 11.

4 See the European Lawyers Registration Regulations 2000 reg 15. If the Authority fails to take a decision regarding initial registration or fails to notify the applicant within four months, the applicant may appeal to the

Master of the Rolls: reg 18(b). As to the procedure on the appeal see the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918 (applied by the European Lawyers Registration Regulations 2000 reg 18(c)).

5 See the European Lawyers Registration Regulations 2000 reg 6.

6 See the European Lawyers Registration Regulations 2000 reg 16.

7 If the renewal date has passed, the European lawyer has requested its cancellation, the Authority believes the lawyer has no intention of practising permanently in the UK, the registered person has died or become a solicitor or barrister or is no longer eligible for registration: see the European Lawyers Registration Regulations 2000 reg 8.

8 European Lawyers Registration Regulations 2000 reg 8. If there is an outstanding complaint against a registered European lawyer the Authority may refuse to cancel his registration or restore him to the register: see reg 9.

9 If the registration has been cancelled because the person has died, or become a solicitor or barrister or if the Authority is satisfied that he is no longer eligible for registration.

10 As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

11 European Lawyers Registration Regulations 2000 reg 10.

12 European Lawyers Registration Regulations 2000 reg 17. When the Authority writes to any person under the European Lawyers Registration Regulations 2000 it must write to the registered European lawyer's last notified address: reg 12.

13 As to the procedure on the appeal see the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918 (applied by the European Lawyers Registration Regulations 2000 reg 18(c)).

14 European Lawyers Registration Regulations 2000 reg 18(a).

UPDATE

627 Registration of European lawyers

NOTE 10--Appointed day is 1 October 2009: SI 2009/1604.

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628. Registration of foreign lawyers.

The Solicitors Regulation Authority¹ must maintain a register of foreign lawyers² containing certain information³. A foreign lawyer wishing to be so registered must apply to the Authority⁴ in the form, and accompanied by the fee, prescribed by the Authority⁵. Where the application is duly made by a foreign lawyer the Authority may register the applicant if it is satisfied that the legal profession of which the applicant is a member is one which is so regulated as to make it appropriate for members of that profession to be managers of recognised bodies⁶. Every registration has effect from the beginning of the day on which it is entered in the register⁷.

Any certificate purporting to be signed by an officer of the authority and stating that a particular foreign lawyer is or is not registered or was registered during a period specified in the certificate, is, unless the contrary is proved, evidence of that fact and is to be taken to have been so signed⁸.

Under certain circumstances⁹ the Authority may cancel the registration¹⁰. The registration of any foreign lawyer against whom a bankruptcy order is made must be suspended on the making of that order¹¹ but the suspension terminates if the order is annulled and an office copy of the order annulling it is served on the Authority¹². Registration is also suspended where a registered foreign lawyer is struck off or suspended from practice¹³.

Any foreign lawyer has a right of appeal¹⁴ against:

- 631 (1) the refusal of the Authority to register him or renew his registration;
- 632 (2) the refusal of the Authority to terminate the suspension of his registration or an application for revival¹⁵;
- 633 (3) the failure of the Authority to deal with any application by him for registration, renewal of registration or the termination¹⁶ of a suspension within a reasonable time; or
- 634 (4) any condition¹⁷ imposed by the Authority¹⁸.

1 The Courts and Legal Services Act 1990 s 89, Sch 14 (as amended and prospectively amended by the Legal Services Act 2007 Sch 16 paras 127, 128(a)), Sch 23 refer to the 'Society' (ie the Law Society: see the Courts and Legal Services Act 1990 Sch 14 para 1) or the 'Law Society'. Similarly the Foreign Lawyers Registration Regulations 1995 (which apply to all registrations and applications for registration, or renewal of registration, for any period commencing on or after 1 November 1995) were made by the Council of the Law Society with the concurrence of the Master of the Rolls under the Courts and Legal Services Act 1990 Sch 14 (see the Foreign Lawyers Registration Regulations 1995 reg 1) and refer to the 'Law Society'. However in practice the body responsible for the register is the Solicitors Regulation Authority (see PARA 619).

2 See the Foreign Lawyers Registration Regulations 1995 reg 2. Such information may be inspected by any person during office hours: reg 3. Notification of registration must be sent by post to the applicant: see reg 16. 'Foreign lawyer' means a person who is not a solicitor or barrister but who is a member, and entitled to practise as such, of a legal profession regulated within a jurisdiction outside England and Wales: Courts and Legal Services Act 1990 s 89(9). 'Registered foreign lawyer' for the purposes of s 89 and Sch 14 (see s 89(9)), the Solicitors' Code of Conduct 2007 (see r 24.01), the Solicitor's Accounts Rules 1998 (see r 2(2)(u)) and the Solicitors' Indemnity Insurance Rules 2008 (see r 3.1) means a foreign lawyer who is registered under the Courts and Legal Services Act 1990 s 89. References in the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, to registered foreign lawyers are references to lawyers whose names are entered in the register of foreign lawyers maintained under the Courts and Legal Services Act 1990 s 89 and include, where appropriate, those who have ceased to be registered in that register or whose registration has been suspended: Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 2(3).

3 Courts and Legal Services Act 1990 s 89(1). An application for a change of name upon the register must be made to the Authority on such form and accompanied by such additional information and evidence as may be specified by the Authority: see the Foreign Lawyers Registration Regulations 1995 reg 12. As to the capacity in which a registered foreign lawyer may work see PARA 679. The Authority may make regulations with respect to the keeping of the register (including the manner in which entries are to be made, altered or removed) and applications for registration and renewal of registrations: see the Courts and Legal Services Act 1990 Sch 14 para 2(4). Until a day to be appointed the register may be kept by means of a computer: Sch 14 para 2(5) (prospectively repealed by the Legal Services Act 2007 Sch 16 para 128(g), Sch 23). As from a day to be appointed such regulations under the Courts and Legal Services Act 1990 Sch 14 para 2(4) may relate to the form of the register and the making available to the public of the information contained in the register (including the manner in which, and hours during which, the information is to be made so available and whether the information is to be made available free of charge): see Sch 14 para 2(4) (prospectively amended by the Legal Services Act 2007 Sch 16 para 128(e)(ii), (f)). At the date at which this volume states the law no such day had been appointed.

4 See the Courts and Legal Services Act 1990 s 89(2).

5 See the Courts and Legal Services Act 1990 Sch 14 para 2(1) (as amended: see note 1); and the Foreign Lawyers Registration Regulations 1995 regs 5, 6. Such a fee must be prescribed with the concurrence of the Master of the Rolls: Courts and Legal Services Act 1990 Sch 14 para 2(1)(b) (as so amended). However as from a day to be appointed the words 'Legal Services Board' are substituted for the words 'Master of the Rolls' by the Legal Services Act 2007 Sch 16 para 128(b). At the date at which this volume states the law no such day had been appointed. The Authority may also require additional information to be supplied on any prescribed form: see the Foreign Lawyers Registration Regulations 1995 reg 4. The applicant is under an obligation to ensure all details provided on the form are correct and complete and is usually required to sign the form: see regs 9-11. As to the Legal Services Board see PARA 303 et seq.

6 Courts and Legal Services Act 1990 Sch 14 para 2(2) (as amended (see note 1); and further amended by the Legal Services Act 2007 Sch 16 para 128(c)(ii)). Until a day to be appointed any registration must be made subject to such conditions as the Authority sees fit to impose: Courts and Legal Services Act 1990 Sch 14 para 2(3) (prospectively repealed by the Legal Services Act 2007 Sch 16 para 128(d), Sch 23). As from a day to be appointed the Authority may direct that a foreign lawyer's registration is to have effect subject to such conditions as the Authority thinks fit to impose and such a direction may be given in respect of a foreign lawyer at the time he is first registered or at any time when the registration has effect: Courts and Legal Services Act 1990 Sch 14 para 2A (prospectively added by the Legal Services Act 2007 Sch 16 para 129). At the date at which this volume states the law no such day had been appointed.

7 Courts and Legal Services Act 1990 Sch 14 para 3(1). The Authority may make regulations prescribing the date (the 'renewal date') by which each registered foreign lawyer must apply for his registration to be renewed and requiring every entry in the register to specify the renewal date applicable to that registration: Sch 14 para 3(2) (as amended: see note 1). Any such regulations may:

- 2 (1) provide different renewal dates for different categories of registered foreign lawyer or different circumstances;
- 3 (2) provide for the Authority to specify, in the case of individual registered foreign lawyers, different renewal dates to those prescribed by the regulations;
- 4 (3) make such transitional, incidental and supplemental provision in connection with any provision for different renewal dates as the Authority considers expedient: Sch 14 para 3(3) (as so amended).

The renewal date for registration is 31 October: see the Foreign Lawyers Registration Regulations 1995 reg 7. However when registration is cancelled because no application for renewal has been received the application is treated as a renewal of application if an application is received within 12 months of the renewal date but is dated from the date of receipt by the Authority: see reg 8.

8 Courts and Legal Services Act 1990 Sch 14 para 4.

9 If the renewal date has passed, the registered foreign lawyer has requested its cancellation, the registered person has died or become a solicitor or barrister or is registered as a European lawyer: see Foreign Lawyers Registration Regulations 1995 regs 13, 15.

10 See the Courts and Legal Services Act 1990, Sch 14 para 3(4); and the Foreign Lawyers Registration Regulations 1995 regs 13-15.

11 Courts and Legal Services Act 1990 Sch 14 para 10(1). 'Bankruptcy order' includes any order which is not a bankruptcy order but which has the same or a similar effect under the law in force in any territory outside England and Wales: Sch 14 para 10(3).

12 See the Courts and Legal Services Act 1990 Sch 14 para 10(2).

13 See the Courts and Legal Services Act 1990 Sch 14 para 11(1). 'Struck off' and 'suspended from practice' mean:

5 (1) any action taken within the jurisdiction by reference to which the registered foreign lawyer is qualified to be registered; or

6 (2) where the registered foreign lawyer is qualified to be registered by reference to more than one jurisdiction, any action taken within any one of those jurisdictions,

which is the equivalent, respectively, of a solicitor being struck off the roll or suspended from practice under the Solicitors Act 1974 (Courts and Legal Services Act 1990 Sch 14 para 11(2)).

Where a person's registration has been suspended by virtue of Sch 14 para 11, it must be revived:

7 (a) if his right to practise in the jurisdiction in question is restored; and

8 (b) a copy of the instrument restoring his right, certified to be a true copy by an officer of the appropriate court in the jurisdiction in question, or the professional body concerned, is served on the Authority (Sch 14 para 12(1)).

Where a person whose registration is suspended by virtue of Sch 14 para 11 applies to the Authority for the suspension to be terminated, the Authority may terminate it subject to such conditions, if any, as it thinks fit to impose: Sch 14 para 12(2). Where a foreign lawyer's registration is revived (whether as the result of the termination of its suspension, restoration by order of the Tribunal or for any other reason), that revival takes effect on such date, and subject to such conditions, as the Authority may direct: Sch 14 para 13.

14 The foreign lawyer may appeal to the Master of the Rolls who may make such order as he thinks fit: Courts and Legal Services Act 1990 Sch 14 para 14(1), (3). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918. However as from a day to be appointed such an appeal is made to the High Court which may make such an order as it thinks fit (including in relation to the payment of costs) and its decision is final: see the Courts and Legal Services Act 1990 Sch 14 para 14(1), (3)-(5) (Sch 14 para 14(2), (3) prospectively amended and Sch 14 para 14(4), (5) prospectively added by the Legal Services Act 2007 Sch 16 para 135(a)(i), (d)). Until a day to be appointed an appeal under head (1), (2) or (4) must be brought within one month beginning with the date on which the Authority notifies the applicant of its decision on his application: see the Courts and Legal Services Act 1990 Sch 14 para 14(2) (prospectively repealed by the Legal Services Act 2007 Sch 16 para 135(b), Sch 23). As from a day to be appointed the Authority may make rules providing that appeals under Sch 14 para 14 lie to the Tribunal and not to the High Court: see the Solicitors Act 1974 s 49A(1), (2)(f) (not yet in force); and PARA 905. At the date at which this volume states the law no such day had been appointed.

15 Ie an application under the Courts and Legal Services Act 1990 Sch 14 para 12.

16 Ie under the Courts and Legal Services Act 1990 Sch 14 para 12(2).

17 Ie any condition imposed by the Authority under the Courts and Legal Services Act 1990 Sch 14 para 2(3), 12(2) or 13 or, as from a day to be appointed, under Sch 14 para 2(2A), 12(2) or 13: see Sch 14 para 14(1) (d) (prospectively amended by the Legal Services Act 1990 Sch 16 para 135(a)(ii)). At the date at which this volume states the law no such day had been appointed.

18 See the Courts and Legal Services Act 1990 Sch 14 para 14(1).

UPDATE

628 Registration of foreign lawyers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 1--Amendment made by Legal Services Act 2007 Sch 16 para 127 in force 31 March 2009 (SI 2009/503); amendment made by Legal Services Act 2007 Sch 16 para 128(a) in force 7 March 2008 (SI 2008/222).

NOTES 3, 6, 14, 17--Day appointed is 1 July 2009: SI 2009/1365.

NOTE 5--Day appointed is 1 January 2010: SI 2009/3250.

NOTE 14--Courts and Legal Services Act 1990 Sch 14 para 14(1) amended: SI 2009/1589.

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D. SOLICITORS DISCIPLINARY TRIBUNAL

629. Constitution of the Tribunal.

The Solicitors Disciplinary Tribunal¹ consists of solicitor members and lay members², all appointed by the Master of the Rolls³. The lay members must be persons who are neither solicitors nor barristers⁴. The Tribunal may make rules⁵ empowering it to elect a solicitor member as its president⁶ and about the procedure and practice to be followed in relation to the making, hearing and determination of applications and complaints, including provision about the composition of the Tribunal⁷. The Tribunal, by a simple majority, must appoint one solicitor member and one lay member to be its vice-presidents⁸.

1 As to the functions of the Tribunal see PARA 906 et seq. The Tribunal may regulate its own procedure subject to the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 21(1). The Tribunal may dispense with any requirements of the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, in respect of notices, statements, witnesses, service or time in any case where it appears to the Tribunal to be just so to do: r 21(2).

2 The solicitor members must be practising solicitors of not less than ten years' standing: Solicitors Act 1974 s 46(3)(a). A Tribunal member holds and vacates office in accordance with the terms of his appointment, and on ceasing to hold office is eligible for re-appointment: s 46(4). The Tribunal may pay its members such remuneration, fees or allowances as it may determine with the approval of the Legal Services Board: s 46(5) (substituted by the Legal Services Act 2007 Sch 16 para 47(2)). As to the Legal Services Board see PARA 303. As to transitional provisions applying until the appointment of a chief executive of the Legal Services Board under Sch 1 para 13 (see PARA 307) see the Legal Services Act 2007 (Commencement No 2 and Transitory Provisions) Order 2008, SI 2008/1436, art 4(a). Subject to the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 6(1), (3) (see PARA 911) a division must be constituted for the hearing of any application or matter relating to an application: r 4. Two of the division members must be solicitor members and one must be a lay member and (unless the president determines otherwise) a solicitor member must act as chairman: r 4. The Tribunal (or a panel of Tribunal members consisting of not less than five members of whom not less than two must be lay members) may give notices or make directions concerning the practices or procedures of the Tribunal: see r 21(3). The Tribunal must promulgate notices or directions given or made under r 21(3) under the authority of the president and practice directions in force prior to the date on which the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, come into force remain in full force and effect after that date: see r 21(4).

3 Solicitors Act 1974 s 46(2). The Legal Services Act 2007 ss 32-34, 69, 70, Sch 7 apply in relation to the Tribunal as they apply in relation to an approved regulator but with modifications: see ss 179, 180. Section 180 has effect subject to further modification until Sch 4 para 1 (see PARA 329) is brought into force: see the Legal Services Act 2007 (Commencement No 1 and Transitory Provisions) Order 2008, SI 2008/222, arts 2(f), 6.

4 Solicitors Act 1974 s 46(3)(b).

5 Solicitors Act 1974 s 46(9) (amended by the Legal Services Act 2007 Sch 16 para 47(5)(a), (b), Sch 23). These rules are made by statutory instrument (Solicitors Act 1974 s 46(12)) and in the exercise of the power so conferred, the Tribunal has made the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, which came into force on 14 January 2008 (r 1) and revoked and replaced the Solicitors (Disciplinary Proceedings) Rules 1994, SI 1994/288. As to the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, see PARA 906 et seq. The president of the Tribunal holding office immediately before the date on which these rules come into force continues to hold office until the Tribunal's annual general meeting next following 30 April 2009: Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(1). Subject to r 3(1) the Tribunal, by a simple majority, must appoint one of the solicitor members to be its president to hold office for a period of three years and the person so appointed may be re-appointed for a further period not exceeding three years: r 3(2).

6 Solicitors Act 1974 s 46(9)(a).

7 Solicitors Act 1974 s 46(9)(b) (amended by the Legal Services Act 2007 Sch 16 para 47(5)(c)). Without prejudice to the generality of s 46(9)(b), the rules may:

- 9 (1) empower the president to appoint a chairman for the hearing and determination of any application or complaint (s 46(10)(a));
- 10 (2) provide that, if the president does not appoint a chairman, a solicitor member is to act as chairman (s 46(10)(b)); and
- 11 (3) provide, in relation to any application or complaint relating to a solicitor or a recognised body, that where, in the opinion of the Tribunal no prima facie case in favour of the applicant or complainant is shown in the application or complaint, the Tribunal may make an order refusing the application or dismissing the complaint without requiring the solicitor or recognised body to whom or which it relates to answer the allegations and without hearing the applicant or complainant (s 46(10)(c); applied by the Administration of Justice Act 1985 s 9(6), Sch 2 para 17(1)(c)).

See further PARA 712. As from a day to be appointed if the Tribunal makes an alteration of its rules under the Solicitors Act 1974 s 46(9)(b) the alteration does not have effect unless it is approved for the purposes of the Legal Services Act 2007: s 178(1). An alteration is approved for the purposes of the Legal Services Act 2007 if:

- 12 (a) it is approved by the Board under Pt 3;
- 13 (b) it is an exempt alteration; or
- 14 (c) it is an alteration made in compliance with a direction under s 32 (given by virtue of s 179): s 178(2).

For the purposes of head (a), Sch 4 paras 20-27 apply in relation to an application by the Tribunal for approval of an alteration or alterations of the Tribunal rules as they apply in relation to an application by an approved regulator for approval of an alteration or alterations of its regulatory arrangements: see s 178(3).

For the purposes of head (b) an exempt alteration is an alteration which the Board has directed is to be treated as exempt for the purposes of s 178: s 178(4). Such a direction may be specific or general, and must be published by the Board: s 178(5).

For the purposes of s 178 'alteration' of the Tribunal rules include the making of such rules and the modification of such rules: s 178(6).

8 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(3). The vice-presidents hold office for such period or periods not exceeding three years as the Tribunal thinks fit and exercise such functions as are exercisable under the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, by the president as he may direct: r 3(3).

UPDATE

629 Constitution of the Tribunal

NOTE 7--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(1) THE PROFESSION/(ii) Organisation of Representation and Regulation/D. SOLICITORS DISCIPLINARY TRIBUNAL/630. Clerk to the Tribunal.

630. Clerk to the Tribunal.

The Solicitors Disciplinary Tribunal must appoint a clerk to the Tribunal and may also appoint other clerks, including clerks appointed to deal with a particular case or cases¹. A clerk so appointed by the Tribunal must be a solicitor or barrister of not less than ten years' standing². A clerk must vacate his office if in the Tribunal's opinion (with which the Master of the Rolls agrees) he is physically or mentally incapable of performing his duties or he retires or he is removed from office by a resolution of the Tribunal approved by the Master of the Rolls³. The clerk is responsible to the Tribunal for the administration of the Tribunal in an efficient manner⁴. The services of a clerk may be provided to the Tribunal through a body independent of the Authority and that body may employ him on such terms (including remuneration and pension provision) as the Tribunal thinks fit⁵.

The Tribunal may prescribe the duties to be performed by the clerks or for which they are responsible and those duties must include arrangements for:

- 635 (1) the submission of applications for certification of a case to answer⁶;
- 636 (2) making pre-listing arrangements including directions of an administrative nature⁷;
- 637 (3) listing of and attendance at hearings⁸;
- 638 (4) securing a record of hearings (by tape recording or other means)⁹;
- 639 (5) advising the Tribunal on matters of law or procedure as may be necessary or expedient¹⁰;
- 640 (6) preparing summaries of allegations, evidence and submissions for inclusion in the Tribunal's detailed findings¹¹;
- 641 (7) drawing orders and findings and filing them¹²;
- 642 (8) the general supervision of other clerks and the Tribunal's administration and staff¹³; and
- 643 (9) maintaining records and collecting statistics required by the Tribunal¹⁴.

1 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(5), (6).

2 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(7).

3 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(8).

4 See the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(9).

5 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(10).

6 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(a).

7 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(b).

8 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(c).

9 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(d).

10 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(e).

11 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(f).

- 12 See the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(g).
- 13 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(h).
- 14 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(11)(i).

UPDATE

630 Clerk to the Tribunal

TEXT AND NOTES--See *Virdi v Law Society* [2010] EWCA Civ 100, [2010] All ER (D) 172 (Feb) (assistance of tribunal clerk in drafting formal written findings after decision of tribunal given was not ultra vires).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(1) THE PROFESSION/(ii) Organisation of Representation and Regulation/D. SOLICITORS DISCIPLINARY TRIBUNAL/631. Funding the Tribunal.

631. Funding the Tribunal.

The Solicitors Disciplinary Tribunal must submit, in respect of each year,¹ a budget for the year² approved by the Legal Services Board³. The budget for a year must be submitted no later than the specified date⁴.

The amount specified in a budget submitted under the above provisions must be paid to the Tribunal in such instalments and at such times as may be agreed or, in the absence of such agreement, before the beginning of the year to which the budget relates⁵.

Other amounts may be paid as appropriate⁶.

1 For the purposes of the Solicitors Act 1974 s 46A 'year' means calendar year: s 46A(8) (added by the Legal Services Act 2007 Sch 16 para 48).

2 A budget for a year is a statement of the amount of money which the Tribunal estimates is required to enable it to meet all of its expenditure in that year (having regard to any amounts received but not spent in previous years): s 46A(2) (as added: see note 1).

3 See the Solicitors Act 1974 s 46A(1) (as added: see note 1). As to the requirement for the Legal Services Board to consult before approving a statement for these purposes see s 46A(3) (as so added). As to the Legal Services Board see PARA 303.

4 See the Solicitors Act 1974 s 46A(4), (5) (as added: see note 1).

5 See the Solicitors Act 1974 s 46A(6) (as added: see note 1).

6 See the Solicitors Act 1974 s 46A(7) (as added: see note 1).

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E. LEGAL COMPLAINTS SERVICE

632. Introduction.

As from a day to be appointed¹ the Law Society is an approved regulator² and is under a duty to ensure that the exercise of an approved regulator's regulatory functions is not prejudiced by its representative functions³. However, in practice the powers of the Law Society to investigate consumer complaints have been devolved to the Legal Complaints Service and consequently, until a day to be appointed, the Legal Complaints Service is responsible for several functions previously dealt with by the Law Society⁴.

Solicitors are under a duty to co-operate with the Legal Complaints Service in an open, prompt and co-operative way⁵. A solicitor must not try to hinder, prevent or victimise a person who wishes to report his conduct to the Legal Complaints Service⁶. Nor may a solicitor enter into agreements attempting to preclude investigations by the Legal Complaints Service⁷.

1 The Legal Services Act 2007 s 30 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 See the Legal Services Act 2007 Sch 4 para 1(1); and PARA 358 et seq. The Law Society is also a qualifying regulator for the purposes of the Immigration and Asylum Act 1999 Pt 5 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**) (see the Legal Services Act 2007 Sch 18 para 2). As to the meaning of 'approved regulator' see PARA 358.

3 See PARA 374.

4 See PARA 633 et seq. As from a day to be appointed client complaints will be dealt with by the Office for Legal Complaints with overall regulation by the Legal Services Board: see PARA 603. As to the Legal Services Board see PARA 303.

5 Solicitors' Code of Conduct 2007 r 20.03(1). Rule 20 also applies to an overseas practice: see r 15.20.

6 See the Solicitors' Code of Conduct 2007 r 20.05(1), (2). However a solicitor should only issue defamation proceedings in respect of a complaint to the Authority if he can properly allege malice: see r 20.05(4).

7 See the Solicitors' Code of Conduct 2007 r 20.05(3).

UPDATE

632 Introduction

NOTE 5--Solicitors' Code of Conduct 2007 r 15.20 amended on 31 March 2009.

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633. Remuneration certificates.

Where a solicitor has delivered a bill of costs amounting to not more than £50,000 to an entitled person¹ in respect of any business not being contentious business², the client may, without prejudice to his right to assess the costs³, require the solicitor to obtain a certificate from the Legal Complaints Service⁴ stating that in its opinion the sum charged is fair and reasonable or, as the case may be, what is a fair and reasonable sum, and the sum so certified, if less than that charged, is, in the absence of assessment, to be the sum payable⁵. The entitled person, however, is not entitled to require the solicitor to obtain a certificate after one month from the date of being given the required information as to his rights to a certificate and assessment of costs or after the bill has been either assessed or paid⁶. On requiring the solicitor to obtain a remuneration certificate, a client must pay to the solicitor the paid disbursements and value added tax comprised in the bill together with 50 per cent of the costs unless:

- 644 (1) the client has already paid the amount required, by deduction from money held or otherwise⁷; or
- 645 (2) the solicitor or (if the solicitor refuses) the Legal Complaints Service has agreed in writing to waive all or part of this requirement⁸.

1 'Entitled person' means a client or an entitled third party: Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 2.

2 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 1(2). As to the meaning of 'contentious business' see PARA 933 note 2.

3 Ie under the Solicitors Act 1974 ss 70-72.

4 The Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, refers to the Council (ie the Council of the Law Society (see art 2)). However remuneration certificates are issued by the Legal Complaints Service: see PARA 632.

5 Solicitors (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 4(1), (2). As to solicitors' remuneration generally see PARA 931 et seq.

6 See the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, arts 9(a), 10(b).

7 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(1)(a). See also PARA 940.

8 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(1)(b). See also PARA 940.

UPDATE

633 Remuneration certificates

TEXT AND NOTES--SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

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634. Redress.

Where the provision of services by a solicitor has not been of a quality that might reasonably be expected the Legal Complaints Service has the power to compensate clients by reducing the solicitor's costs, or ordering the solicitor to rectify his error, pay compensation or take such action as may be specified¹.

1 See the Solicitors Act 1974 Sch 1A; and PARA 895.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(2) TRAINING AND QUALIFICATION/(i) In general/635. Introduction.

(2) TRAINING AND QUALIFICATION

(i) In general

635. Introduction.

Legal education and the conduct of solicitors and prospective solicitors are controlled and administered by the Solicitors Regulation Authority¹. No person is qualified to act as a solicitor unless he has been admitted as a solicitor², his name is on the roll³ and he has in force a practising certificate⁴ issued by the Authority⁵.

A person who has been admitted as a solicitor and whose name is on the roll is to be taken to be acting as a solicitor⁶ if he is employed in connection with the provisions of any legal services by:

- 646 (1) any person who is qualified to act as a solicitor⁷;
- 647 (2) any partnership at least one member of which is so qualified⁸;
- 648 (3) a recognised⁹ body¹⁰; or
- 649 (4) as from a day to be appointed, any other person who for the purposes of the Legal Services Act 2007 is an authorised person in relation to an activity which is a reserved legal activity¹¹.

A solicitor need not be a British citizen¹².

1 See PARA 619.

2 See PARA 661.

3 See PARA 662 et seq.

4 Ie a certificate issued in accordance with the provisions of the Solicitors Act 1974 Pt 1 authorising him to practise as a solicitor. As to practising certificates see PARA 667 et seq.

5 Solicitors Act 1974 s 1.

6 Ie for the purposes of the Solicitors Act 1974 and if he would not otherwise be taken to be so acting: s 1A (added by the Courts and Legal Services Act 1990 s 85).

7 Solicitors Act 1974 s 1A(a) (as added: see note 6).

8 Solicitors Act 1974 s 1A(b) (as added: see note 6).

9 Ie a body recognised under the Administration of Justice Act 1985 s 9 (see PARAS 688, 691).

10 Solicitors Act 1974 s 1A(c) (as added (see note 6); amended by the Legal Services Act 2007 Sch 16 paras 1, 2(b), Sch 23).

11 Solicitors Act 1974 s 1A(d) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 2(c)). Until a day to be appointed (ie the coming into force of s 13 (see PARA 509)) the reference to an authorised person in the Solicitors Act 1974 s 1A(d) is to be read as a reference to a person listed in the Legal Services Act 2007 Sch 22 para 15 (see PARA 691) other than a person listed in Sch 22 para 15(b) or (c): see Sch 22 para 12. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'reserved legal activity' see PARA 512.

12 See the Solicitors Act 1974 s 29. Nothing in the Act of Settlement (1700) s 3 which provides, among other things, that aliens are capable of enjoying certain offices or places of trust, is to be taken to disqualify a person from becoming or practising as a solicitor of the supreme court: s 29. As from a day to be appointed s 29 is amended by the Constitutional Reform Act 2005 Sch 11 para 21(4) and the words 'senior courts' are substituted for the words 'supreme court'. At the date at which this volume states the law no such day had been appointed.

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635 Introduction

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

TEXT AND NOTE 11--Day appointed is 1 January 2010: SI 2009/3250.

NOTE 12--Day appointed is 1 October 2009: SI 2009/1604.

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636. Legal Services Consultative Panel.

Until a day to be appointed the Secretary of State must appoint persons to form a panel to be known as the Legal Services Consultative Panel¹. One of the panel's duties is to assist in the maintenance and development of standards in education and training of persons offering legal services².

1 The Courts and Legal Services Act 1990 s 18A (added by the Access to Justice Act 1999 s 35(2)) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(c), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

1 See the Courts and Legal Services Act 1990 s 18A(1) (as prospectively repealed); and PARA 327.

2 See the Courts and Legal Services Act 1990 s 18A(3) (as prospectively repealed); and PARA 328.

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637. Training regulations.

The Solicitors Regulation Authority¹ may make regulations ('training regulations') about education and training for persons seeking to be admitted or to practise as solicitors². The training regulations:

650 (1) may prescribe:

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7. (a) the education and training to be undergone by persons seeking admission as solicitors³;
8. (b) any education or training to be undergone by persons who have been admitted as solicitors⁴;
9. (c) the examinations or other tests to be undergone by persons seeking admission as solicitors or who have been admitted⁵;
10. (d) the qualifications and reciprocal duties and responsibilities of persons undertaking to give education or training for the purposes of the regulations or undergoing such education or training⁶; and
11. (e) the circumstances in which education or training under the regulations may be started or terminated⁷;

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651 (2) may require persons who have been admitted as solicitors to hold practising certificates while they are undergoing education or training under the regulations⁸;

652 (3) may include provision for the charging of fees by the Authority and the application of fees which the Authority receives⁹;

653 (4) may make different provision for different classes of persons and different circumstances¹⁰.

1 Until a day to be appointed this power is to be exercised with the concurrence of the Secretary of State, the Lord Chief Justice and the Master of the Rolls: see the Solicitors Act 1974 s 2 (amended by SI 2003/1887; and prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 4(a), Sch 23). Where, under the Courts and Legal Services Act 1990 Sch 4 the Secretary of State approves any regulation such as is mentioned in the Solicitors Act 1974 s 2(1), the requirement of the concurrence of the Lord Chief Justice and the Master of the Roll does not apply and this has effect whether or not the regulation is required to be approved under the Courts and Legal Services Act 1990 Sch 4: see the Solicitors Act 1974 s 2(4), (5) (added by the Courts and Legal Services Act 1990 Sch 17 para 8; amended by the Access to Justice Act 1999 Sch 6 paras 1, 2 and SI 2003/1887; and prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 4(c), Sch 23).

The Solicitors Act 1984 s 2 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1))). However in practice the body currently responsible for the regulation of solicitors and the issuing of practising certificates is the Solicitors Regulation Authority (see PARA 619). As to the meaning of the 'Charter' see PARA 835 note 1.

2 See the Solicitors Act 1974 s 2(1). As to such regulations see the Training Regulations 1990; and PARA 638 et seq.

3 Solicitors Act 1974 s 2(3)(a)(i) (amended by the Legal Services Act 2007 Sch 16 paras 1, 4(b)(i), Sch 23).

4 Solicitors Act 1974 s 2(3)(a)(ii).

5 Solicitors Act 1974 s 2(3)(a)(iii).

6 Solicitors Act 1974 s 2(3)(a)(iv).

7 Solicitors Act 1974 s 2(3)(a)(v) (amended by the Legal Services Act 2007 Sch 16 paras 1, 4(b)(ii), (iii), Sch 23).

8 Solicitors Act 1974 s 2(3)(b).

9 Solicitors Act 1974 s 2(3)(c).

10 Solicitors Act 1974 s 2(3)(d).

UPDATE

637 Training regulations

NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

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638. Compliance with training regulations.

Subject to certain exceptions¹, a person seeking to be admitted as a solicitor must have complied with the training regulations². He must have enrolled as a student with the Solicitors Regulation Authority³, and have satisfactorily completed the academic stage of training⁴ and the vocational stage of training⁵.

1 le subject to the provisions of the Qualified Lawyers Transfer Regulations 1990: see PARA 643.

2 See the Solicitors' Admission Regulations 1994 regs 3, 4. The regulations were made on 22 July 1994 by the Master of the Rolls under the Solicitors Act 1974 s 28 (see PARA 662) with the concurrence of the Lord Chancellor and the Lord Chief Justice and are published on the Solicitors Regulation Authority's website. As to applications for admission see PARA 661.

3 As to enrolment see PARA 644 et seq. The Training Regulations 1990 refer to the Law Society. However in practice the body currently responsible for the training of solicitors is the Solicitors Regulation Authority (see PARA 619).

4 As to the academic stage of training see PARA 646 et seq.

5 Training Regulations 1990 reg 4. The Training Regulations 1990 were made on 12 July 1990 by the Council of the Law Society under the Solicitors Act 1974 ss 2 (see PARA 637), 80 (see PARAS 613, 617) with the approval of the Lord Chancellor and each of the designated judges. They are published with consolidated amendments to 9 November 2000 on the Solicitors Regulation Authority's website.

UPDATE

638 Compliance with training regulations

NOTE 2--Solicitors' Admission Regulations 1994 regs 3, 4 now Solicitors' Admission Regulations 2009, regs 6, 7. See also regs 3-5 (appeals to the High Court against decisions of the Solicitors Regulation Authority).

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639. Admission of other United Kingdom lawyers.

A member of the English Bar or a Northern Ireland barrister who wishes to be admitted as a solicitor must, prior to applying for admission, have passed the test in professional conduct and accounts¹ and have: (1) satisfactorily completed 12 months' pupillage and 12 months' legal practice acceptable to the Solicitors Regulation Authority²; (2) completed two years' legal practice acceptable to the Authority; or (3) been employed in a way consistent with service under a training contract for such a period not exceeding two years as the Authority may determine³.

A person who has qualified as a solicitor in Scotland must hold or be eligible to hold an unrestricted practising certificate prior to applying for a certificate of eligibility, and must pass the test in property prior to applying for admission⁴. A person qualified as a solicitor in Northern Ireland is exempt from passing any subject in the test⁵. Unless the Authority otherwise determines, Scottish advocates must take and pass the test in professional conduct and accounts, and in property⁶.

1 Qualified Lawyers Transfer Regulations 1990 regs 6, 10(a). As to those regulations see PARA 643 note 4. 'Test' means the Qualified Lawyers Transfer Test which is an assessment of competence in the specified subjects, ie property, litigation, professional conduct and accounts, and principles of common law: regs 2(3), 4.

2 The Qualified Lawyers Transfer Regulations 1990 refer to the Law Society. However in practice the body currently responsible for the admission of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 Qualified Lawyers Transfer Regulations 1990 regs 6(a)-(c), 10(b)-(d).

4 See the Qualified Lawyers Transfer Regulations 1990 reg 7. As to establishing eligibility and the issue of eligibility certificates see regs 5, 17. As to practising certificates see PARA 667 et seq.

5 Qualified Lawyers Transfer Regulations 1990 reg 8.

6 Qualified Lawyers Transfer Regulations 1990 reg 9.

UPDATE

639 Admission of other United Kingdom lawyers

NOTES--Qualified Lawyers Transfer Regulations 1990 regs 2, 4-6, 8-10, 17 now Qualified Lawyers Transfer Regulations 2009 regs 2-5, 7-9, 16.

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640. European lawyers.

Any lawyer applying for admission as a solicitor in England and Wales pursuant to EC Directive 2005/36¹ or any legislation implementing the Directive in the UK, who is required to pass an aptitude test, must pass the test² in such subjects as the Solicitors Regulation Authority³ may determine⁴. However, a lawyer applying under EC Directive 98/5⁵ is exempt from an aptitude test provided he can demonstrate that he has met that directive's requirements and in particular that he has regularly pursued for a period of at least three years an activity in the United Kingdom in the law of the United Kingdom⁶.

1 The Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications (OJ L255, 30.09.2005, p 22); implemented in the United Kingdom by European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781. See further PARA 534 et seq.

2 As to the meaning of 'test' see PARA 639 note 1.

3 The Qualified Lawyers Transfer Regulations 1990 refer to the Law Society. However in practice the body currently responsible for the admission of solicitors is the Solicitors Regulation Authority (see PARA 619).

4 Qualified Lawyers Transfer Regulations 1990 reg 12(a). Special provision is made for solicitors and barristers qualified in Ireland: see reg 13.

5 The Directive 98/5/EC of the European Parliament and of the Council to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L77, 14.03.1998, p 36); implemented in the United Kingdom by the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119. See further PARA 534 et seq.

6 Qualified Lawyers Transfer Regulations 1990 reg 12(b).

UPDATE

640 European lawyers

NOTES 4, 6--Qualified Lawyers Transfer Regulations 1990 regs 12, 13 now Qualified Lawyers Transfer Regulations 2009 regs 11, 12.

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641. Admission of other overseas lawyers, specialist practitioners and academics.

An appropriately qualified overseas lawyer¹ must, prior to applying for admission as a solicitor, pass the test² in such subjects as are specified by the Solicitors Regulation Authority³. Such a lawyer may also be required to complete such a period of experience in legal practice, not exceeding two years, as the Authority may determine⁴.

A lawyer qualified in any jurisdiction outside England and Wales, and having at least ten years' practising experience, who is able to demonstrate substantial experience and an acknowledged international reputation as a distinguished specialist practitioner in one or more fields of practice is required to pass the test in such subjects as the Authority may determine prior to applying for admission⁵.

A person who has taught on courses forming part of the process of qualification as a solicitor for ten years full-time or a commensurately longer period part-time must have, prior to applying for admission, passed the test in such subjects as the Authority may determine, and undertaken legal practice acceptable to the Authority⁶.

1 See the Qualified Lawyers Transfer Regulations 1990 reg 11(1), Schedule.

2 As to the meaning of 'test' see PARA 639 note 1.

3 See the Qualified Lawyers Transfer Regulations 1990 reg 11(1). The Qualified Lawyers Transfer Regulations 1990 refer to the Law Society. However in practice the body currently responsible for the admission of solicitors is the Solicitors Regulation Authority (see PARA 619).

4 See Qualified Lawyers Transfer Regulations 1990 reg 11(2). As to overseas lawyers who have not passed the appropriate qualifying exams see reg 11(3)-(5).

5 See the Qualified Lawyers Transfer Regulations 1990 reg 14.

6 See the Qualified Lawyers Transfer Regulations 1990 reg 15. Unless the Authority otherwise determines, the legal practice must amount in total to the equivalent of two years' full-time employment, undertaken over a total period not exceeding six years immediately preceding the date of application for admission, for at least half of the time in blocks of not less than two months: reg 15(b)(i)-(iii).

UPDATE

641 Admission of other overseas lawyers, specialist practitioners and academics

NOTES--Qualified Lawyers Transfer Regulations 1990 regs 11, 14, 15, Schedule now Qualified Lawyers Transfer Regulations 2009 regs 10, 13, 14, Schedule.

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642. Exemptions.

A person holding office as solicitor to the Treasury, any other public department, the Church Commissioners, the Duchy of Cornwall¹ or the City of London² may discharge his official duties without having obtained the qualifications of a solicitor or holding a practising certificate³. A similar exemption is conferred on any clerk or officer appointed to act for any of these officers⁴. This exemption from holding a practising certificate does not, however, apply to solicitors who are Crown Prosecutors⁵. The Solicitor of the City of London is not affected by any practice rules or accounts rules⁶ made by the Solicitors Regulation Authority⁷.

As from a day to be appointed, nothing in the Legal Services Act 2007 prejudices or affects the rights or privileges of the offices listed above⁸, or requires a person who holds one of those offices, or any clerk or officer appointed to act for such a person, to be entitled to carry on an activity which is a reserved legal activity⁹ in any case where, by virtue of the foregoing provisions¹⁰, it would not have been necessary for that person to be admitted and enrolled and to hold a practising certificate¹¹.

By various statutes persons may be authorised to conduct certain legal proceedings without having obtained the qualifications of a solicitor¹². A solicitor employed by the Commissioners of Customs and Excise may act as a solicitor in certain proceedings even though he does not hold a current practising certificate¹³.

1 See the Solicitors Act 1974 s 88(1). As to the Treasury and the Duchy of Cornwall see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**; and as to the Church Commissioners see **ECCELESIASTICAL LAW** vol 14 PARA 361 et seq.

2 See Solicitors Act 1974 s 88(2). See also the Solicitors Act 1843 s 47 (repealed). As to the City of London see **LONDON GOVERNMENT** vol 29(2) (Reissue) para 31.

3 Solicitors Act 1974 s 88(1), (2). As to practising certificates see PARA 667 et seq.

4 Solicitors Act 1974 s 88(1).

5 Solicitors Act 1974 s 88(1A) (added by the Prosecution of Offences Act 1985 s 4(4)).

6 The rules made under the Solicitors Act 1974 s 31 or 32. As to accounts rules see PARA 835 et seq.

7 Solicitors Act 1974 s 88(2).

8 See the Legal Services Act 2007 s 193(1), (3) (at the date at which this volume states the law s 193 had not yet been brought into force). A person who exercises before any court a right of audience, or conducts litigation in relation to proceedings in any court by virtue of this section has a duty to the court in question to act with independence in the interests of justice: s 193(5). That duty overrides any obligations which the person may have (otherwise than under the criminal law) if it is inconsistent with them: s 193(6). As to the meaning of 'right of audience' see PARA 512 note 3; as to the meaning of 'conduct of litigation' see PARA 512 note 4.

9 As to the meaning of 'reserved legal activity' see PARA 512.

10 The by virtue of the Solicitors Act 1974 s 88(1) (see notes 1-4).

11 See the Legal Services Act 2007 s 193(2) (at the date at which this volume states the law s 193 had not yet been brought into force). See also note 8.

12 See eg the County Courts Act 1984 ss 60(2), 60A, and **COURTS**; the Local Government Act 1972 s 223(1), and **LOCAL GOVERNMENT** vol 69 (2009) PARA 573; the Social Security Administration Act 1992 s 59(6)(a), and **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) PARA 332; the Customs and Excise Management Act 1979 s

155(1), and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 540; and the Commissioners for Revenue and Customs Act 2005 s 25(1), and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1207. Nothing in the provisions of the Solicitors Act 1974 relating to the right to practise (see ss 1-30) affects any enactment empowering an unqualified person to conduct, defend or otherwise act in relation to any legal proceedings: s 27 (repealed as from a day to be appointed by the Legal Services Act 2007 ss 177, 210, Sch 16, Pt 1, paras 1, 29, Sch 23). 'Unqualified person' means a person who is not qualified under s 1 (see PARA 302) to act as a solicitor: s 87(1). As to offences relating to unqualified persons purporting to act as solicitors etc see PARA 589 et seq.

13 See the Commissioners for Revenue and Customs Act 2005 s 25(2), (5)(e)(i); and **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) PARA 1207.

UPDATE

642 Exemptions

TEXT AND NOTE 8--Day appointed is 1 January 2010: SI 2009/3250.

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643. Misbehaviour of prospective solicitors.

Where a person who seeks to be enrolled with the Solicitors Regulation Authority¹ as a student is considered by the Authority unsuitable to become a solicitor because of his conduct or character, the Authority may not issue a certificate of enrolment². The effect of this is to prevent the person from proceeding to any stage of training beyond the first year of a course leading to an exempting law degree³. The Authority has similar powers in respect of English barristers and foreign lawyers seeking to be admitted as solicitors and in respect of solicitors who have been admitted in Scotland or Northern Ireland⁴.

Where a person who is unadmitted⁵ is considered unsuitable to become a solicitor because of his conduct, the Authority has a number of powers it may exercise⁶. It may cancel enrolment, prohibit him from entering into a training contract, refuse to register his training contract, discharge his training contract, prohibit him from attending a legal practice course or an integrated course or a course leading to an exempting law degree, or from attending a professional skills course, or oppose his admission⁷. The Authority has similar powers in respect of English barristers seeking to be admitted as solicitors and in respect of solicitors who have been admitted in Scotland or Northern Ireland⁸.

The applicant may appeal to the Authority for a review of the decision within one month of receiving notice of it⁹. Within three months of receiving notification of the result of the review, the applicant may appeal to the Master of the Rolls¹⁰; and may make not more than three further applications at intervals of not less than 12 months following refusal to issue a certificate¹¹.

1 The Training Regulations 1990 and the Qualified Lawyers Transfer Regulations 1990 refer to the 'Society' (ie the Law Society (see the Training Regulations 1990 reg 2(3) and the Qualified Lawyers Transfer Regulations 1990 reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for setting the standards for qualifying as a solicitor (see PARA 619).

2 See the Training Regulations 1990 reg 6. As to those regulations see PARA 638 note 5; and as to enrolment with the Solicitors Regulation Authority see PARAS 644-645. The same underlying principles in deciding whether a person is fit to be a solicitor apply to both pre-admission and post-admission; the test is a necessarily high test to be decided on the facts of individual cases but much depends upon the nature of the wrongdoing, dishonesty or other untoward conduct: *Jideofa v Law Society*; *Evan v Solicitors Regulation Authority*; *Begum v Solicitors Regulation Authority* (31 July 2007, unreported) decided before Sir Anthony Clarke, MR (applying *Bolton v Law Society* [1994] 2 All ER 486, [1994] 1 WLR 512, CA). See further PARA 870.

3 Training Regulations 1990 reg 5. An exempting law degree is a qualifying law degree incorporating a legal practice course: reg 2(3).

4 See the Qualified Lawyers Transfer Regulations 1990 reg 5. The Qualified Lawyers Transfer Regulations were made by the Council of the Law Society on 4 October 1990 under the Solicitors Act 1974 ss 2 (see PARA 637), 80 (see PARA 613) with the concurrence of the Lord Chancellor, the Lord Chief Justice and the Master of the Rolls and came into force, subject to certain exceptions, on 4 January 1991: see reg 1(1). The regulations are published, with consolidated amendments to 23 October 2007 on the Solicitors Regulation Authority's website.

5 Ie a person who (1) holds a current certificate of enrolment; or (2) has completed the vocational stage of training and does not hold a current certificate of enrolment, but who in either case has not yet been admitted as a solicitor: Training Regulations 1990 reg 32(1).

6 See the Training Regulations 1990 reg 32(1), (2).

7 See the Training Regulations 1990 reg 32(2).

8 See the Qualified Lawyers Transfer Regulations 1990 reg 18. There is a right of appeal to the Master of the Rolls from a decision of the Authority under reg 18. As to the procedure on the appeal see the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918.

9 See the Training Regulations 1990 reg 32(3)(i).

10 Training Regulations 1990 reg 32(3)(ii). As to the procedure on the appeal see the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918.

11 See the Training Regulations 1990 reg 32(3)(iii), (iv).

UPDATE

643 Misbehaviour of prospective solicitors

NOTES 4, 8--Qualified Lawyers Transfer Regulations 1990 regs 2, 5, 18 now Qualified Lawyers Transfer Regulations 2009 regs 2, 4, 17.

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(ii) Enrolment

644. Necessity for certificate of enrolment.

A person must obtain a certificate of enrolment¹ from the Solicitors Regulation Authority² before he may proceed to any stage of training beyond the first year of a course leading to an exempting law degree³, attend a legal practice course⁴ or an integrated course⁵, or serve under a training contract⁶.

1 As to the issue of a certificate of enrolment see PARA 645.

2 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(2))). However in practice the Solicitors Regulation Authority is currently responsible for setting the standards for qualifying as a solicitor (see PARA 619).

3 As to the meaning of 'exempting law degree' see PARA 643 note 3.

4 As to the legal practice course see PARA 649.

5 'Integrated course' means a course of such standard as the Authority determines and approves incorporating study of the foundations of legal knowledge and a legal practice course: see the Training Regulations 1990 reg 2(3).

6 See the Training Regulations 1990 reg 5. As to training contracts, formerly called 'articles', or 'articles of training' see PARA 651 et seq.

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645. Issue of certificate of enrolment.

The Solicitors Regulation Authority must issue a certificate of enrolment¹ only if it is satisfied:

- 654 (1) as to the applicant's character and suitability to become a solicitor; and
- 655 (2) that the applicant has a good knowledge of spoken and written English².

The Authority may require the applicant to attend before a committee or panel appointed by the Authority³. The Authority may refuse to issue a certificate and must notify the applicant in writing giving reasons for the decision⁴. The applicant may appeal for a review of the decision within one month of receiving notice of it and, within three months of receiving notification of the result of the review, the applicant may appeal to the Master of the Rolls⁵. The applicant may make not more than three further applications at intervals of not less than 12 months following refusal to issue a certificate⁶.

1 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(2))). However in practice the Solicitors Regulation Authority is currently responsible for setting the standards for qualifying as a solicitor (see PARA 619). A first certificate of enrolment is valid for a period not exceeding 24 months as specified in it, and any other certificate of enrolment is valid for 12 months from the date of issue; but a certificate which is in force when the holder commences a training contract remains valid for the duration of that contract: see reg 6(6). As to the training contract see PARA 651 et seq.

2 See the Training Regulations 1990 reg 6(1). The Authority may require the applicant to attend before a committee or panel for the purpose of satisfying itself as to these matters: reg 6(2).

3 Training Regulations 1990 reg 6(2).

4 Training Regulations 1990 reg 6(3).

5 Training Regulations 1990 reg 6(4)(i), (ii). The Master of the Rolls may affirm the decision of the Authority or may direct the Authority to issue a certificate to the applicant: see reg 6(ii)(a), (b). As to the procedure on the appeal see the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918.

6 Training Regulations 1990 reg 6(5). With respect to lawyers qualified in other jurisdictions wishing to establish eligibility see the Qualified Lawyers Transfer Regulations 1990 reg 5; as to appeals see reg 17; and as to the procedure on the appeal see the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918.

UPDATE

645 Issue of certificate of enrolment

NOTE 6--Qualified Lawyers Transfer Regulations 1990 regs 5, 6, 17 now Qualified Lawyers Transfer Regulations 2009 regs 4, 5, 16.

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(iii) The Academic Stage of Training

646. In general.

An entrant who is required to serve under a training contract¹ must complete the academic stage of training² by:

- 656 (1) graduating with an exempting law degree³;
- 657 (2) graduating with a qualifying law degree⁴;
- 658 (3) passing a common professional examination⁵;
- 659 (4) gaining a diploma in law⁶; or
- 660 (5) satisfactorily completing an integrated course⁷.

A person completing the academic stage of training must obtain a certificate to that effect⁸.

1 As to training contracts see PARA 651 et seq.

2 'Academic stage of training' means that stage of training of an entrant to the solicitors' profession which is completed by satisfying the Training Regulations 1990 reg 7: reg 2(3). In exceptional circumstances the Solicitors Regulation Authority may accept such other academic ability as it thinks fit: see reg 7(2).

3 Training Regulations 1990 r 7(1)(i). As to the meaning of 'exempting law degree' see PARA 643 note 3.

4 Training Regulations 1990 r 7(1)(ii). 'Qualifying law degree' means: (1) a degree awarded by a university in the United Kingdom or the Republic of Ireland; (2) a degree awarded by an institution in England or Wales empowered by the Privy Council to award degrees; (3) a degree conferred by the Council for National Academic Awards before its dissolution on 31 March 1993; and (4) a licence in law conferred by the University College of Buckingham before the college was granted university status, in each case being of such a standard as the Solicitors Regulation Authority determines and following a course of study which is acceptable to the Authority with regard to the provision of adequate learning resources and which includes the study of the foundations of legal knowledge (ie those foundations of law the study of which is prescribed by the Authority and the Council of Legal Education for the purpose of completing the academic stage of training by undertaking a common professional examination course and passing the assessments and examinations set during that course) and the passing of appropriate assessments set in those foundations; or (5) such other degree or qualification as the Authority considers the equivalent of the qualifications listed above: see the Training Regulations 1990 reg 2(3).

5 Training Regulations 1990 reg 7(1)(iii). As to the common professional examination see PARA 647.

6 Training Regulations 1990 reg 7(1)(iv). 'Diploma in law' means a diploma or second degree in law awarded by: (1) a university in the United Kingdom or the Republic of Ireland; (2) an institution in England or Wales empowered by the Privy Council to award degrees; (3) a former polytechnic or college authorised to award degrees of the Council of National Academic Awards before its dissolution on 31 March 1993; (4) the College of Law; or (5) an overseas university or college approved by the Authority, being in each case of such standard as the Authority determines and following a course of study which includes the study of the foundations of legal knowledge and the passing of appropriate assessments set in those foundations: see the Training Regulations 1990 reg 2(3).

7 Training Regulations 1990 reg 7(1)(v). As to the meaning of 'integrated course' see PARA 644 note 5.

8 See Training Regulations 1990 regs 7(3), (4), 8. A certificate under reg 8 remains in force for seven years after 1 October in the year in which the applicant obtained the degree or diploma, passed a common professional examination or satisfactorily completed an integrated course, or for two years from the date of the certificate, whichever is later: reg 8(4).

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647. Common professional examination.

A common professional examination is an examination following a course, including assessments and examinations, approved by the CPE Board¹ for the purposes of completing the academic stage of training².

1 'CPE Board' means the Common Professional Examinations Board set up pursuant to resolutions passed by the Law Society and by the Council of the Inns of Court: Training Regulations 1990 reg 2(3). As to those regulations see PARA 638 note 5.

2 Training Regulations 1990 regs 2(3), 9-13.

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(iv) The Vocational Stage of Training

648. In general.

No person may be admitted as a solicitor unless the Solicitors Regulation Authority¹ is satisfied that such a person has completed the vocational stage of training². A person, other than a person following an exempting law degree³, may not commence the vocational stage before satisfactorily completing the academic stage⁴.

The vocational stage of training is completed by satisfactory completion of a legal practice course⁵ or an integrated course⁶, or obtaining an exempting law degree; followed by serving under a training contract⁷ and satisfactory completion of a professional skills course⁸ and such other course as the Authority may from time to time prescribe⁹.

1 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(2))). However in practice the Solicitors Regulation Authority is currently responsible for qualification as a solicitor (see PARA 619).

2 Training Regulations 1990 reg 14(1). As to those regulations see PARA 638 note 5.

3 As to the meaning of 'exempting law degree' see PARA 643 note 3.

4 Training Regulations 1990 reg 14(2).

5 See PARA 649.

6 As to the meaning of 'integrated course' see PARA 644 note 5.

7 As to training contracts see PARA 651 et seq.

8 See PARA 650.

9 Training Regulations 1990 reg 14(3).

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649. The legal practice course.

A training contract¹ may not be entered into by any person unless he has satisfactorily completed a legal practice course ('LPC') or an integrated course².

The LPC is a course intended to build on the applicants' academic knowledge of the law, and prepare them for their training and early years in practice³. It is provided by authorised LPC providers⁴ in line with guidelines issued by the Solicitors Regulation Authority⁵. The Authority must monitor the standards achieved by the students enrolled on the LPC, and satisfy itself that they are consistent and adequate⁶.

1 As to training contracts see PARA 651 et seq.

2 See the Training Regulations 1990 regs 14(3)(i)(a), 30(1), (2), 31(i), 32(2). As to those regulations see PARA 638 note 5. As to the meaning of 'integrated course' see PARA 644 note 5.

3 See the document 'Information for Providers of Legal Practice Course' published by the Solicitors Regulation Authority's Education and Training Unit, para 2.1.

4 For a current list of LPC providers see the Solicitors Regulation Authority website (www.sra.org.uk at the date at which this volume states the law).

5 See the document 'Information for Providers of Legal Practice Course' published by the Solicitors Regulation Authority's Education and Training Unit. These guidelines provide details a new style of LPC which providers may offer from 2009, and must offer from 2010.

6 See the Monitoring of Courses Regulations 1991.

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650. Professional skills course.

Subject to the Qualified Lawyers' Transfer Regulations¹, no person can be admitted as a solicitor unless he has satisfactorily completed a professional skills course ('PSC')². The PSC is offered exclusively by course providers approved by the Solicitors Regulation Authority³, and a trainee solicitor may reckon as good service under a training contract such periods of absence as may be necessary for the trainee to attend a PSC⁴.

The course is designed to enhance the prospective solicitor's skills and knowledge of specific areas of law, ethics and practice and to build upon the legal practice course. At the date at which this volume states the three subject areas covered are:

- 661 (1) financial and business skill;
- 662 (2) advocacy and communication skills; and
- 663 (3) client care and professional standards⁵.

1 See the Qualified Lawyers' Transfer Regulations 1990: see PARA 643 note 4.

2 Training Regulations 1990 reg 31(1). Only a person who has satisfactorily completed a legal practice course (see PARA 649) or an integrated course (see PARA 644 note 5) may attend a professional skills course: reg 31(2). As to the Training Regulations 1990 see PARA 638 note 5.

3 For a current list of accredited PSC providers see the Solicitors Regulation Authority website (www.sra.org.uk at the date at which this volume states the law). As to the Solicitors Regulation Authority see PARA 619.

4 See the Training Regulations 1990 reg 24(ii). As to training contracts see PARA 651 et seq.

5 See the document 'Professional Skills Course' published by the Solicitors Regulation Authority on 1 August 2005, para 1.

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(v) Training Contracts

651. Necessity for a training contract.

No person, except certain overseas solicitors (including in this context certain solicitors admitted in Scotland or Northern Ireland¹), and certain persons who have served as assistant to a justices' clerk², or a Fellow of the Institute of Legal Executives³ may be admitted as a solicitor unless he has served in a training contract⁴. A member or former member of the English Bar who has caused himself to be disbarred, and has satisfied the Solicitors Regulation Authority⁵ that he is a suitable person to be admitted as a solicitor is, however, exempt from service in a training contract⁶.

1 See the Qualified Lawyers' Transfer Regulations 1990 regs 2(3), 7, 8, Schedule; and PARA 639 et seq. As to the Qualified Lawyers' Transfer Regulations 1990 see PARA 643 note 4.

2 See the Training Regulations 1990 reg 30. As to the Training Regulations 1990 see PARA 638 note 5.

3 See the Training Regulations 1990 reg 29. As to legal executives see PARA 1463 et seq.

4 See the Training Regulations 1990 reg 14(1), (3)(ii). 'Training contract' means a written contract between one or more training establishments and a trainee solicitor which complies with the Training Regulations 1990; 'training establishment' means a body, firm, company or individual authorised by the Solicitors Regulation Authority to take a trainee solicitor; and 'trainee solicitor' means any person receiving training under a training contract: reg 2(3).

5 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for setting the standards for admission as a solicitor (see PARA 619).

6 See the Qualified Lawyers' Transfer Regulations 1990 reg 6. A barrister or former barrister is required to pass the test in professional conduct and accounts prior to applying for admission, and must have (1) satisfactorily completed 12 months' pupillage and 12 months' legal practice acceptable to the Authority; (2) completed two years' legal practice acceptable to the Authority; or (3) been employed in a way consistent with service under a training contract for such period not exceeding two years as the authority may determine: reg 6.

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652. Length of a training contract.

The term of a training contract is two years¹.

A person may be permitted to serve an extended training contract for a period not exceeding four years and be employed part time, provided that:

- 664 (1) the total period of service is no less than would be served by a person in full-time employment and receiving training under a two year training contract²; and
- 665 (2) the Solicitors Regulation Authority³ is satisfied that adequate training can be given⁴.

A person who follows a course leading to completion of the academic stage of training⁵ or the legal practice course⁶ on a part-time study basis may enter into a training contract in accordance with guidance issued from time to time by the Authority⁷.

1 Training Regulations 1990 reg 21(1). A training principal may in accordance with guidance issued from time to time by the Solicitors Regulation Authority, determine that time worked prior to entering into a training contract is equivalent to a period of service under a training contract: reg 21(4). As to those regulations see PARA 638 note 5. As to the meaning of 'training contract' see PARA 651 note 4.

2 Training Regulations 1990 reg 21(2)(i).

3 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for setting the standards for qualifying as a solicitor (see PARA 619).

4 Training Regulations 1990 reg 21(2)(ii).

5 As to the academic stage of training see PARA 646 et seq.

6 As to the legal practice course see PARA 649.

7 Training Regulations 1990 reg 21(3). This provision applies notwithstanding reg 14 (see PARA 648): reg 21(3).

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653. Solicitors with whom a training contract may be served.

Only a training establishment¹ may take a trainee solicitor². Every training establishment must provide training in accordance with guidance issued from time to time by the Solicitors Regulation Authority³. The Authority may declare any body, firm, company or individual a training establishment subject to such conditions and for such period as it considers appropriate; vary or discharge any condition; refuse to declare any body, firm, company or individual so authorised; or declare that a training establishment ceases to be one⁴. There is a right of review of the Authority's decision by application within one month of the receipt of notification of it⁵. Every training establishment must appoint a training principal whose name must be notified to the Authority and who must undertake to comply with the training code issued from time to time by the Authority⁶.

The Authority has published a voluntary code of good practice in the recruitment of trainee solicitors⁷.

1 As to the meaning of 'training establishment' see PARA 651 note 4.

2 Training Regulations 1990 reg 15. As to those regulations see PARA 638 note 5. As to the meaning of 'trainee solicitor' see PARA 651 note 4.

3 Training Regulations 1990 reg 16. The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the training of a solicitor (see PARA 619).

4 See the Training Regulations 1990 reg 17.

5 See the Training Regulations 1990 reg 18.

6 See the Training Regulations 1990 reg 19.

7 See the document 'Training trainee solicitors: Voluntary code to good practice in the recruitment of trainee solicitors' published by the Training and Education Unit of the Solicitors Regulation Authority on 29 June 2007.

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654. Contents of a training contract.

Before a training establishment¹ enters into a training contract² with a person it must set out in a letter of offer to that person such information as to the terms and conditions to be included in the training contract as the Solicitors Regulation Authority³ may from time to time prescribe⁴.

The training contract must be for the required term⁵ and must be in such form and contain such terms and conditions as may be prescribed⁶. The present requirements are that the training contract may not be conditional, except upon examination success, nor must it contain a provision for termination other than by mutual consent except in the event of the trainee failing to obtain a specified result in a designated examination. The training contract must provide for a salary which must not be below the minimum prescribed from time to time by the Authority⁷.

1 As to the meaning of 'training establishment' see PARA 651 note 4.

2 As to the meaning of 'training contract' see PARA 651 note 4.

3 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the training of a solicitor (see PARA 619).

4 Training Regulations 1990 reg 20. As to those regulations see PARA 638 note 5.

5 As to the term of service see PARA 652.

6 Training Regulations 1990 reg 22.

7 See the Training Regulations 1990 reg 23(ii); and PARA 655.

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655. Registration of a training contract.

A training contract¹ must be executed and registered in accordance with guidance issued from time to time by the Solicitors Regulation Authority². The Authority may not register a training contract which provides for payment of a salary less than that prescribed from time to time³.

1 As to the meaning of 'training contract' see PARA 651 note 4.

2 Training Regulations 1990 reg 23(i). The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the training of a solicitor (see PARA 619). As to the Training Regulations 1990 see PARA 638 note 5.

3 Training Regulations 1990 reg 23(ii). There may be allowed against such prescribed salary the cash value of any benefits in kind from time to time approved by the Authority: reg 23(ii).

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656. Termination of a training contract.

If the Solicitors Regulation Authority¹ is satisfied that any training contract² ought to be terminated it may order its termination on such terms as it may determine³. A training contract may also be terminated by mutual agreement of the parties⁴.

1 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the training of a solicitor (see PARA 619).

2 As to the meaning of 'training contract' see PARA 651 note 4.

3 Training Regulations 1990 reg 25(1). As to the Training Regulations 1990 see PARA 638 note 5.

4 Training Regulations 1990 reg 25(2).

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657. Monitoring of a training contract.

The Solicitors Regulation Authority¹ may monitor the training provided by a training establishment² in accordance with guidance issued from time to time³. Monitoring may be undertaken through visits to the premises of training establishments⁴.

If a training establishment, solicitor or trainee solicitor⁵ is in default of any of the training requirements⁶, or the Authority is not satisfied either that a trainee solicitor is receiving or has received adequate training or that the training establishment can give the trainee solicitor adequate training, it may exercise such of the following powers as it considers appropriate⁷:

- 666 (1) declare that a training establishment ceases to be such⁸;
- 667 (2) prohibit a training establishment from taking any or more than a specified number of trainee solicitors for such period as the Authority may determine or until otherwise determined⁹;
- 668 (3) impose any other conditions upon the training establishment which it considers appropriate¹⁰;
- 669 (4) terminate the training contract on such terms as it may determine¹¹;
- 670 (5) direct that all or any part of the period served by the trainee solicitor is not be reckoned as good service under a training contract¹²;
- 671 (6) direct that a trainee solicitor must serve such further period under a training contract or receive such further training for such further period and in such form as it requires¹³;
- 672 (7) direct that a training principal undertake such training as the Authority requires¹⁴;
- 673 (8) take such other action as it may consider necessary or appropriate¹⁵.

Any training establishment or trainee solicitor who is aggrieved by any such decision may apply for its review¹⁶.

1 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the training of a solicitor (see PARA 619).

2 As to the meaning of 'training establishment' see PARA 651 note 4.

3 Training Regulations 1990 reg 26(1). As to those regulations see PARA 638 note 5.

4 Training Regulations 1990 reg 26(2).

5 As to the meaning of 'trainee solicitor' see PARA 651 note 4.

6 Ie the requirements of the Training Regulations 1990.

7 Training Regulations 1990 reg 26(3)(i), (ii).

8 Training Regulations 1990 reg 26(3)(a).

9 Training Regulations 1990 reg 26(3)(b).

10 Training Regulations 1990 reg 26(3)(c).

- 11 Training Regulations 1990 reg 26(3)(d).
- 12 Training Regulations 1990 reg 26(3)(e).
- 13 Training Regulations 1990 reg 26(3)(f).
- 14 Training Regulations 1990 reg 26(3)(g).
- 15 Training Regulations 1990 reg 26(3)(h).
- 16 See the Training Regulations 1990 regs 18, 26(4).

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658. Adequate training under a training contract.

No person required to serve a training contract¹ can be admitted as a solicitor² until the Solicitors Regulation Authority³ has certified that it is satisfied that that person has received adequate training in accordance with the terms of a training contract⁴. A person seeking to establish that adequate training has been received must apply to the Authority for a certificate to that effect and must submit such documentation as the authority may require⁵. The Authority must issue a completion certificate if satisfied that the person has received adequate training⁶ and may refuse the completion certificate if not so satisfied⁷.

1 As to persons required to serve under a training contract see PARA 651; and as to the meaning of 'training contract' see PARA 651 note 4.

2 As to admission as a solicitor see PARA 661.

3 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the training of a solicitor (see PARA 619).

4 Training Regulations 1990 reg 28(1). As to those regulations see PARA 638 note 5.

5 Training Regulations 1990 reg 28(2).

6 Training Regulations 1990 reg 28(3).

7 Training Regulations 1990 reg 28(4). The Authority may direct that the trainee undergo further training: see reg 28(4).

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659. Conciliation procedure.

A dispute between a training establishment¹ and a trainee solicitor² with regard to any aspect of the service under the training contract³ may be referred to a conciliator appointed by the Solicitors Regulation Authority⁴. If the Authority is unable to resolve the dispute it may terminate the training contract on such terms as it thinks fit⁵.

1 As to the meaning of 'training establishment' see PARA 651 note 4.

2 As to the meaning of 'trainee solicitor' see PARA 651 note 4.

3 As to the meaning of 'training contract' see PARA 651 note 4.

4 See the Training Regulations 1990 reg 27(1), (2). The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the training of a solicitor (see PARA 619). As to those regulations see PARA 638 note 5.

5 See the Training Regulations 1990 reg 27(3). A training establishment or trainee solicitor aggrieved by any such decision may apply for its review: see regs 18, 27(4).

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660. Continuing professional development.

All solicitors¹ must attend such continuing professional development courses as the Solicitors Regulation Authority² may prescribe³. A solicitor must keep a record of such continuing professional development undertaken, and produce the record to the Authority on demand⁴.

If a solicitor does not work for any period in legal practice or employment in England and Wales these responsibilities are suspended for that period⁵.

1 These provisions also apply to all registered European lawyers (as to whom see PARA 541 et seq), pursuant to Directive 98/5/EC of the European Parliament and of the Council to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L77, 14.3.1998, p 36): see the Training Regulations 1990 regs 33, 34, 36-40, 42, 43.

2 The Training Regulations 1990 refer to the 'Society' (ie the Law Society (see reg 2(3))). However in practice the Solicitors Regulation Authority is currently responsible for overseeing the continuing personal development of a solicitor (see PARA 619).

3 See the Training Regulations 1990 regs 33, 34. For specific provision as to the number of hours continuing professional development a solicitor must complete, and the special provision made for a solicitor working part time, see regs 35, 37-39, 41, 43.

⁴ See the Training Regulations 1990 reg 40.

5 See the Training Regulations 1990 reg 42.

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(vi) Admission and Enrolment

661. Admission as a solicitor.

Subject to certain exceptions¹, no person may be admitted as a solicitor unless he has obtained from the Solicitors Regulation Authority² a certificate that it is satisfied that he has complied with the training regulations³ and is satisfied as to his character and suitability to be a solicitor⁴. Application for admission is made through the Authority by lodging with it a written application in the prescribed form and accompanied by such fee and such documents as the regulations may from time to time prescribe⁵.

An application for admission may be made at any time after the applicant has complied with the Training Regulations 1990 or the Qualified Lawyers Transfer Regulations 1990⁶.

An applicant must be admitted unless the Authority refuses to issue a certificate⁷ that it is satisfied as to the applicant's character and suitability, or it is otherwise not satisfied that the applicant has complied with the Training Regulations 1990 or the Qualified Lawyers Transfer Regulations 1990⁸.

The Authority must lodge with the clerk to the Master of the Rolls not less than two days before each day of admission a list of the persons certified as being entitled to be admitted on that day⁹. On receipt of the list the Master of the Rolls, where no objection is outstanding, by signing the list admits as solicitors the applicants whose names are contained in it and the admission becomes effective on a date determined by the Authority¹⁰. The Authority must prepare an admission certificate in respect of each person admitted, which must be signed by the Master of the Rolls and the secretary of the Authority, or attested in such manner as each of them respectively authorises¹¹.

¹ ie subject to the Justices of the Peace Act 1949 s 20(3) (admission of persons who have served as assistants to justices' clerks).

² The Solicitors Act 1974 refers to the 'Society' (ie the Law Society (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible is the Solicitors Regulation Authority (see PARA 619).

³ ie has complied with the Training Regulations 1990: see PARA 644 et seq. As to those regulations see PARA 638 note 5.

⁴ Solicitors Act 1974 s 3(1). Any person who has obtained a certificate that the Authority is so satisfied may apply to the Master of the Rolls to be admitted as a solicitor; and if any such person so applies, the Master of the Rolls must, unless cause to the contrary is shown to his satisfaction, in writing, and in such manner and form as the Master of the Rolls may from time to time think fit, admit that person to be a solicitor: s 3(2) (amended by the Courts and Legal Services Act 1990 Sch 20). As from a day to be appointed the Solicitors Act 1974 s 3(2) is amended by the Legal Services Act 2007 Sch 16 paras 1, 5(1) so that the Master of the Rolls is replaced in this regard by the Society. However in practice this will be the Solicitors Regulation Authority: see PARA 619. A person must be admitted as a solicitor on a day determined by the Authority within a reasonable period of the application being made: Solicitors' Admission Regulations 1994 reg 4.

⁵ See the Solicitors' Admission Regulations 1994 reg 5. As to those regulations see PARA 638 note 2. Regulations may be made about admission as a solicitor: see the Solicitors Act 1974 s 28(1)(a). Until a day to be appointed such regulations are made by the Master of the Rolls with the concurrence of the Secretary of State and the Lord Chief Justice: Solicitors Act 1974 s 28(1)(a) (amended by SI 2003/1887). As from a day to be appointed the Solicitors Act 1974 s 28 is further amended by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (2), Sch 23 and regulations may instead be made by the Society (ie the Law Society (see the Solicitors Act 1974

s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

6 Solicitors' Admission Regulations 1994 reg 3.

7 lie under the Solicitors Act 1974 s 3(1): see the text and notes 1-4.

8 See the Solicitors' Admission Regulations 1994 reg 6. There is a right of appeal to the Master of the Rolls: see reg 6(iii). As to the procedure on the appeal see the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918. See also *Jideofo v Law Society* (31 July 2007, unreported) decided before Sir Anthony Clarke MR.

9 Solicitors' Admission Regulations 1994 reg 7.

10 Solicitors' Admission Regulations 1994 reg 8.

11 Solicitors' Admission Regulations 1994 reg 9.

UPDATE

661 Admission as a solicitor

NOTES--Solicitors' Admission Regulations 1994 regs 3-9 now Solicitors' Admission Regulations 2009, regs 6-11. See also regs 3-5 (appeals to the High Court against decisions of the Solicitors Regulation Authority).

NOTES 4, 5--Day appointed is 1 July 2009: SI 2009/1365.

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662. Keeping of the roll.

The Solicitors Regulation Authority¹ is required to keep a list of all solicitors of the Supreme Court², called the 'roll'³. Regulations may be made⁴ about the keeping of the roll⁵ and may:

- 674 (1) provide for the manner in which entries are to be made, altered and removed⁶;
- 675 (2) provide for the Authority, at such intervals as may be specified in the regulations, to inquire of solicitors of any class so specified whether they wish to have their names retained on the roll⁷;
- 676 (3) require solicitors of any such class, at such intervals as may be so specified, to pay to the Authority a fee in respect of the retention of their names on the roll of such amount as may be prescribed by the regulations⁸;
- 677 (4) authorise the Authority to remove from the roll the name of any solicitor who:
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 - 12. (a) fails to reply to any inquiry made in pursuance of head (2) or to pay any fee payable by virtue of head (3)⁹; or
 - 13. (b) replies to any such inquiry by indicating that he does not wish to have his name retained on the roll¹⁰;
- 505 678 (5) authorise the Authority to remove from the roll the name of any solicitor who has died¹¹.

1 The Solicitors Act 1974 refers to the 'Society' (ie the Law Society (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

2 As from a day to be appointed the words 'Senior Courts' are substituted for the words 'Supreme Court' by the Constitutional Reform Act 2007 Sch 11, para 2(1), (2).

3 Solicitors Act 1974 s 6(1).

4 Until a day to be appointed such regulations are made by the Master of the Rolls with the concurrence of the Secretary of State and the Lord Chief Justice: Solicitors Act 1974 s 28(1)(b) (amended by SI 2003/1887). As from a day to be appointed the Solicitors Act 1974 s 28 is further amended by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (2), Sch 23 and regulations may instead be made by the Society (ie the Law Society (see the Solicitors Act 1974 s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619). Until a day to be appointed such regulations may also provide for rights of appeal to the Master of the Rolls in connection with the making and alteration of entries on the roll and the removal of entries from it and the Master of the Rolls may make regulations about the procedure for any appeals to him authorised by Pt 1 or regulations under s 28: Solicitors Act 1974 s 28(4), (5) (amended by the Administration of Justice Act 1985 Sch 1 para 8; and prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (6), Sch 23). See the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918. As from a day to be appointed regulations under the Solicitors Act 1974 s 28 may make provision for appeals to the High Court against decisions by the Authority under the regulations and in relation to such an appeal the High Court may make such order as it thinks fit as to payment of costs: s 28(3D), (3E) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (5)). In relation to such appeals the decision of the High Court is final: Solicitors Act s 28(3F) (so prospectively added). As from a day to be appointed the Authority may make rules providing that appeals under s 28(3D) lie to the Tribunal and not to the High Court: see s 49A(1), (2)(d) (not yet in force); and PARA 905. Regulations under s 28 may:

- 15 (1) provide for a person to exercise a discretion in dealing with any matter (s 28(3G)(a) (so prospectively added));
- 16 (2) include incidental, supplementary and consequential provision (s 28(3G)(b) (so prospectively added));
- 17 (3) make transitory or transitional provision and savings (s 28(3G)(c) (so prospectively added));
- 18 (4) make provision generally or only in relation to specified cases or subject to specified exceptions (s 28(3G)(d) (so prospectively added));
- 19 (5) make different provision for different cases (s 28(3G)(e) (so prospectively added)).

At the date at which this volume states the law no days had been appointed.

5 Solicitors Act 1974 s 28(1)(b). The current regulations are the Solicitors (Keeping of the Roll) Regulations 1999 which replaced the Solicitors (Keeping of the Roll) Regulations 1989 on 1 February 1999: Solicitors (Keeping of the Roll) Regulations 1999 reg 2.

6 Solicitors Act 1974 s 28(3). References in the Solicitors Act 1974 to the removal of a solicitor's name from the roll are references to its removal at his own request or in pursuance of regulations under s 28(3A): s 87(2) (a) (amended by the Administration of Justice Act 1985 Sch 1 para 12(b)). They include references to deleting an entry made by means of a computer by whatever means are appropriate: Solicitors Act 1974 s 87(2)(c). Until a day to be appointed the roll may be kept by means of a computer and, if so kept, any entry must be made available for inspection in a legible form during office hours without payment by any person who applies to inspect it: s 6(2), (3). If the roll is not kept by means of a computer, any person may inspect it during office hours without payment: s 6(4). Sections 6(3)-(5), 38(3) are prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 6, 30(1), (3), Sch 23. However as from a day to be appointed the Solicitors Act 1974 s 28(3A)(za) is added by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (4) and provides that regulations about the keeping of the roll may make provision about the form in which the roll is to be kept and the manner in which entries are to be made, altered and removed: Solicitors Act 1974 s 28(3A)(za) (so prospectively added). Also as from a day to be appointed the regulations may require the information on the roll to be made available to the public and specify the manner in which information is to be made so available and require it to be made so available during office hours and without charge: s 28(3A)(e), (f) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (4)(c)). At the date at which this volume states the law no such days had been appointed.

7 Solicitors Act 1974 s 28(3A)(a) (added by the Administration of Justice Act 1985 s 8, Sch 1 para 8). The Authority is required once a year to ask every solicitor without a practising certificate whether he wishes his name to remain on the register and the name of any solicitor who replies that he does not wish to remain on the register may be removed: see the Solicitors (Keeping of the Roll) Regulations 1999 regs 4, 5(a). Similarly the name may also be removed of any solicitor who applies to have his name so removed: see reg 5(d); PARA 665.

8 Solicitors Act 1974 s 28(3A)(b) (as added: see note 7). A fee of £20 is payable by a solicitor wishing to remain on the roll other than a solicitor whose name had been on the roll for 50 years or more or for such shorter time as may be prescribed by the Authority: see Solicitors (Keeping of the Roll) Regulations 1999 reg 13(a), (b).

9 Solicitors Act 1974 s 28(3A)(c)(i) (as added: see note 7). The name of any solicitor who fails to reply within eight weeks to an inquiry made in pursuance of head (2) in the text or to pay the prescribed fee for remaining on the roll may be removed: see the Solicitors (Keeping of the Roll) Regulations 1999 reg 5(b), (c). However the Authority must first write to the solicitor of its intention to remove his name: reg 10.

10 Solicitors Act 1974 s 28(3A)(c)(ii) (as added: see note 7).

11 Solicitors Act 1974 s 28(3A)(d) (as added: see note 7). The name of any solicitor who has died may be removed from the roll: see the Solicitors (Keeping of the Roll) Regulations 1999 reg 5(e).

UPDATE

662 Keeping of the roll

NOTE 2--Day appointed is 1 October 2009: SI 2009/1604.

NOTES 4, 6--Day appointed is 1 July 2009: SI 2009/1365.

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663. Removal, restoration or change of name.

The Solicitors Regulation Authority¹ may remove a solicitor's name from the roll on his application² and, on the application of a former solicitor whose name is not on the roll because it has been so removed, may re-enter a solicitor's name on the roll on payment of such fee as the Authority determines³. An appeal lies⁴ in respect of failure to grant such applications⁵.

Where an order has been filed⁶ ordering the striking off or restoration to the roll of the name of a solicitor, or his suspension or exclusion from legal aid work, or the payment of a penalty or of costs⁷, the Authority must enter on the roll a note of the effect of the order against the name of the solicitor or former solicitor against whom the application or complaint was made⁸.

Where an order is made by the High Court or the Court of Appeal that the name of a solicitor be struck off the roll or that a solicitor be suspended from practice, the proper officer of the court must forthwith send a copy of the order to the Authority, and the Authority must enter a note of the order on the roll against the name of the solicitor and, where the order so directs, must strike that name off the roll⁹.

A solicitor whose name has changed may apply to the Authority for the name to be changed on the roll¹⁰.

1 The Solicitors Act 1974 ss 8, 53 and the Solicitors (Keeping of the Roll) Regulations 1999 refer to the 'Society' (ie the Law Society (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

2 Solicitors Act 1974 s 8(1); and see the Solicitors (Keeping of the Roll) Regulations 1999 reg 5(d). The Authority may refuse to remove from or restore to the roll the name of a solicitor or former solicitor against whom there is an outstanding complaint: reg 8. However the name must not be removed or restored where disciplinary proceedings are pending before the Supreme Court or Tribunal: see reg 9. The Authority may prescribe forms for replies or applications: see reg 12. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

3 Solicitors Act 1974 s 8(2) (amended by the Administration of Justice Act 1985 Sch 1 para 3, Sch 8 Pt III; and the Legal Services Act 2007 Sch 16 paras 1, 8(1), (2)). This power includes power to enter the name of a person whose name was removed from the roll before 1 May 1975 (ie the date of the coming into force of the Solicitors (Amendment) Act 1974 s 5 (repealed)): Solicitors Act 1974 s 8(3). Section 8(2) does not apply to a former solicitor with respect to whom a direction has been given under s 47(2)(g) (see PARA 909): s 8(2A) (added by the Courts and Legal Services Act 1990 Sch 18 para 8). The Authority must write to the solicitor or former solicitor to confirm the relevant changes to the roll have taken place or to give notice that they have refused to make them: see the Solicitors (Keeping of the Roll) Regulations 1999 reg 11.

4 Until a day to be appointed the appeal lies to the Master of the Rolls: see the Solicitors Act 1974 s 8(4) (added by the Courts and Legal Services Act 1990 s 95). The Master of the Rolls may make regulations about such appeals to him: Solicitors Act 1974 s 8(5) (as so added; prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 8(1), (5), Sch 23)). See the Master of the Rolls (Applications and Appeals) Regulations 2001; and PARA 918. However as from a day to be appointed the appeal lies to the High Court: see the Solicitors Act 1974 s 8(4) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 8(1), (3)). In relation to such an appeal the High Court may make such order as it thinks fit to payment of costs: Solicitors Act 1974 s 8(4A) (s 8(4A), (4B) prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 8(1), (5), Sch 23). The decision of the High Court on an appeal under the Solicitors Act 1974 s 8(4) is final: s 8(4B) (as so prospectively added). As from a day to be appointed the Authority may make rules providing that appeals under s 8(4) lie to the Tribunal and not to the High Court: see s 49A(1), (2)(a) (not yet in force); and PARA 905. At the date at which this volume states the law no such days had been appointed.

5 Solicitors Act 1974 s 8(4) (as added and prospectively amended: see note 4). See also the Solicitors (Keeping of the Rolls) Regulations 1999 r 14.

6 As to the filing of orders see PARA 915.

7 Ie an order under the Solicitors Act 1974 ss 47(2)(a)-(i) or under s 47(2B): see PARAS 909-910, 930.

8 Solicitors Act 1974 s 48(2)(a) (amended by the Administration of Justice Act 1985 s 67(1), Sch 7 para 5; and by the Courts and Legal Services Act 1990 s 92(5)). Where the order concerns striking off the roll, suspension from practice or payment of a penalty (ie except where the order only makes provision for matters referred to in the Solicitors Act 1974 s 47(2)(e), (f), (h) or (i) or as from a day to be appointed s 47(2)(ea)) the Authority must cause a notice stating the effect of the order to be published: see s 48(2)(b) (amended by the Courts and Legal Services Act 1990 s 92(5) and the Legal Services Act 2007 Sch 16 paras 1, 50(a)(ii), Sch 23; prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 50(a)(i)). As from a day to be appointed in the case of orders of the Tribunal under the Solicitors Act 1974 s 44E (prospectively added: see PARA 896), the reference in s 48(2)(a) to the application or complaint is to be read as a reference to the Tribunal's order: s 48(5) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 50(c)). At the date at which this volume states the law no such days had been appointed.

9 Solicitors Act 1974 s 53.

10 See the Solicitors (Keeping of the Roll) Regulations 1999 reg 7. The Authority may require such evidence as it thinks fit: see reg 12.

UPDATE

663 Removal, restoration or change of name

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 2--Day appointed is 1 October 2009: SI 2009/1604.

NOTE 4--Day appointed is 1 July 2009: SI 2009/1365.

NOTE 8--Day appointed in relation to Legal Services Act 2007 Sch 16 para 50(a)(i) is 1 July 2009 (SI 2009/1365) and in relation to Legal Services Act 2007 Sch 16 para 50(c) is 31 March 2009 (SI 2009/503).

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664. Restrictions on power to strike names off roll.

No solicitor is liable to have his name struck off the roll on account of any failure to comply with the requirements with respect to persons seeking admission as solicitors of any training regulations or on account of any defect in his admission and enrolment, unless the application to strike his name off the roll is made within 12 months of the date of his enrolment or fraud is proved to have been committed in connection with the failure or defect¹.

No solicitor is liable to have his name struck off the roll by reason only that a solicitor who undertook a training responsibility for him under training regulations neglected or omitted to take out a practising certificate or that the name of a solicitor who undertook such a responsibility for a period has been removed from or struck off the roll after the end of that period².

1 Solicitors Act 1974 s 54(1) (amended by the Legal Services Act 2007 Sch 16 para 53(a)).

2 Solicitors Act 1974 s 54(2) (amended by the Legal Services Act 2007 Sch 16 para 53(b)). As to practising certificates see PARA 667 et seq.

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665. Entry and restoration of name struck off.

On production of:

- 679 (1) an admission of any person as a solicitor¹; or
- 680 (2) an order for the restoration to the roll of the name of a person whose name has been struck off it²; or
- 681 (3) an order³ for the restoration to the roll of the name of a former solicitor in respect of whom a direction has been given⁴,

and on payment of such fee as the Solicitors Regulation Authority from time to time determines, the Authority must enter the name of that person on the roll⁵.

1 See the Solicitors Act 1974 s 7(a) (amended by the Courts and Legal Services Act 1990 Sch 20). Until a day to be appointed the admission required is one signed by the Master of the Rolls: see the Solicitors Act 1974 s 7(a) (as amended). However s 7(a) is prospectively substituted by the Legal Services Act 2007 Sch 16 paras 1, 7(a) as from a day to be appointed under s 211(2) and instead applies to the production of written evidence of admission as a solicitor by the Solicitors Regulation Authority: see the Solicitors Act 1974 s 7(a) (so prospectively substituted). The prospectively substituted s 7 refers to the Society (ie the Law Society (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

2 Solicitors Act 1974 s 7(b). Although a person whose name has been removed from the roll may apply for his name to be restored to the roll, this does not apply if:

- 20 (1) the Solicitors Disciplinary Tribunal has made an order prohibiting such restoration except by order of the Tribunal; or
- 21 (2) the person's name has been struck off the roll: Solicitors (Keeping of the Roll) Regulations 1999 reg 6.

3 ie an order under Solicitors Act 1974 s 47(2)(h) (see PARA 909).

4 Solicitors Act 1974 s 7(c).

5 Solicitors Act 1974 s 7 (amended by the Administration of Justice Act 1985 Sch 1 para 2, Sch 8 Pt III); Solicitors (Keeping of the Roll) Regulations 1999 reg 13(c). The Solicitors Act 1974 refers to the Society (ie the Law Society (see s 87(1); and PARA 602 note 4)); s 7 (as amended and further amended by the Legal Services Act 2007 Sch 16 paras 1, 7(b)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619). References to striking a solicitor's name off the roll are references to striking it off as a disciplinary sanction, and include references to deleting an entry made by means of a computer by whatever means are appropriate: Solicitors Act 1974 s 87(2)(b), (c) (s 47(2)(b) amended by the Administration of Justice Act 1985 Sch 1 para 12(b)).

UPDATE

665 Entry and restoration of name struck off

NOTE 1--Legal Services Act 2007 Sch 16 para 7(a) in force 1 July 2009: SI 2009/1365.

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666. The roll as evidence.

As from a day to be appointed the following provisions have effect¹. An extract from the roll which is certified as correct by the Solicitors Regulation Authority² is evidence of the matters mentioned in it³ and a certificate from the Authority stating that a person's name is or was on the roll is evidence of the matters stated⁴.

1 The Solicitors Act 1974 s 18 is substituted by the Legal Services Act 2007 Sch 16 paras 1, 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 18 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 Solicitors Act 1974 s 18(1) (prospectively substituted: see note 1).

4 Solicitors Act 1974 s 18(2) (prospectively substituted: see note 1).

UPDATE

666 The roll as evidence

TEXT AND NOTE 1--Day appointed is 1 July 2009: SI 2009/1365.

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(vii) Practising Certificates

667. Necessity for practising certificate.

A person practising as a solicitor¹ must have in force a practising certificate issued by the Solicitors Regulation Authority or be exempt² from holding such a certificate³ and a solicitor is not qualified to act as a solicitor unless he has in force such a certificate⁴. This applies to any admitted person⁵. An unqualified person⁶ cannot recover his costs⁷ in respect of anything done by him or by any other person in any action, suit or matter if he does not hold a practising certificate⁸, not even on detailed assessment by a client who has submitted to pay what is found due on assessment⁹. Furthermore, money deposited with a solicitor on account of costs generally cannot validly be appropriated to items which are irrecoverable for want of a practising certificate¹⁰ and any money so appropriated may be recovered by the client, if on the facts the court is satisfied (as it will be by a direction or agreement to retain and pay costs, without special reference to specific items) that an assessment was necessary or contemplated¹¹. If, however, money is paid to a solicitor to meet particular disbursements or to pay costs or fees in respect of which no assessment is contemplated, and is applied accordingly, then the client cannot recover the money even if the solicitor was uncertificated at the relevant date¹². The successful party to any litigation cannot recover any costs or disbursements from the opposite party if the solicitor acting for him was uncertificated¹³, although the steps taken by the uncertificated solicitor on his client's behalf are not invalid¹⁴.

A solicitor to a public department who is by statute authorised to act in that capacity need not take out a practising certificate to enable him so to act¹⁵.

1 A person is practising as a solicitor if they are involved in legal practice and:

- 22 (1) their involvement in the firm or the work depends on them being a solicitor;
- 23 (2) they are held out explicitly or implicitly as a practising solicitor;
- 24 (3) they are employed explicitly or implicitly as a solicitor; or
- 25 (4) they are deemed by the Solicitors Act 1974 s 1A (see PARA 635) to be acting as a solicitor: Solicitors' Code of Conduct 2007 r 20.01(2).

For this purpose 'legal practice' includes not only the practice of law but also the provision of business services such as are provided by solicitors: r 20.01(3).

A solicitor who was formerly a registered European lawyer and practising from an office in the UK must have in force a practising certificate: r 20.01(4). As to the meaning of 'registered European lawyer' see PARA 542 note 2.

2 He exempt under the Solicitors Act 1974 s 88 (see PARA 642).

3 See the Solicitors' Code of Conduct 2007 r 20.01(1). Rule 20 also applies in relation to an overseas practice: r 15.20.

4 See the Solicitors Act 1974 s 1; and PARA 635. Such a certificate is known as a 'practising certificate': ss 1, 87(1). A person practising without such a certificate is an unqualified person within the meaning of s 1 (see PARAS 635-642), and as such liable to a fine: see PARA 589 et seq. Committal proceedings are not vitiated by the fact that the defendant's solicitor did not hold a practising certificate: *R v Scott (John)* (1978) 122 Sol Jo 523, CA. Solicitors holding a practising certificate are covered by a group licence under the Consumer Credit Act 1974: see **CONSUMER CREDIT** vol 9(1) (Reissue) PARA 122.

- 5 See the Solicitors Act 1974 s 1A; and PARA 635.
- 6 'Unqualified person' does not here include an European lawyer providing services under the European Communities (Services of Lawyers) Order 1978, SI 1978/1910: see art 18(2), Schedule Pt 3. As to the meaning of 'unqualified person' generally see PARA 642 note 12.
- 7 As to the meaning of 'costs' see PARA 835 note 5.
- 8 See the Solicitors Act 1974 s 25(1); and PARA 590. However this does not prevent the recovery of money paid or to be paid to a solicitor on behalf of this client if such money would have been recoverable if the solicitor had held a practising certificate when acting: see s 25(2); and PARA 590. It is also prospectively provided that s 25 does not apply where a person does an act which would be an offence under s 23 (preparing papers for probate etc: see PARA 592) but for the Courts and Legal Services Act 1990 ss 54, 55 (probate services): see the Solicitors Act 1974 s 25(3) (not yet in force); and PARA 590.
- 9 *Re Sweeting* [1898] 1 Ch 268, overruling *Re Jones* (1869) LR 9 Eq 63. Cf *Re Hope* (1872) 7 Ch App 766; --v *Sexton* (1832) 1 Dowl 180.
- 10 *Kent v Ward* (1894) 70 LT 612, CA.
- 11 *Browne v Barber* [1913] 2 KB 553, CA.
- 12 See *Fullalove v Parker* (1862) 12 CBNS 246; *Browne v Barber* [1913] 2 KB 553 at 578, CA, per Farwell LJ. *Re Jones* (1869) LR 9 Eq 63, which has been overruled, and *Fullalove v Parker* proceed on the basis that the debt is not extinguished but only the right to enforce it by action; in the circumstances premised in the text the Solicitors Act 1974 s 25(1) would not enable the money to be recovered, because of either express agreement by the client or express appropriation by him and authority to pay. See also s 25(2); and PARA 590.
- 13 *Fowler v Monmouthshire Rly and Canal Co* (1879) 4 QBD 334, DC, overruling *Reeder v Bloom* (1825) 3 Bing 9. The same principle applies even though the uncertificated solicitor who was really acting used the name of a certificated solicitor: *Irvin v Sanger* (1888) 58 LJQB 64, DC; affd (1889) 5 TLR 171, CA.
- 14 *Sparling v Brereton* (1866) LR 2 Eq 64; *Richards v Bostock* (1914) 31 TLR 70.
- 15 See the Solicitors Act 1974 s 88(1), s 88(1A); and PARA 642.

UPDATE

667 Necessity for practising certificate

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--Solicitors' Code of Conduct 2007 r 15.20 amended on 31 March 2009.

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668. Application for practising certificate.

Until a day to be appointed the following provisions have effect¹. On receipt of an application for a practising certificate, the Solicitors Regulation Authority² must cause the applicant's full name, his place or places of business and the date of admission to be entered in a register kept for that purpose³. If any person makes any false statement material to the application, a complaint may be made to the Solicitors Disciplinary Tribunal by or on behalf of the Authority⁴.

In certain cases⁵, unless otherwise ordered⁶, not less than six weeks' notice must be given before applying for a certificate⁷. Every application for a practising certificate which is to follow on immediately from the applicant's current practising certificate must reach the Authority on or before the replacement date⁸.

As from a day to be appointed the following provisions have effect⁹. A person whose name is on the roll¹⁰ may apply to the Authority to be issued with a practising certificate¹¹. Such an application may include an application for a sole solicitor endorsement¹². The name of the solicitor holding the practising certificate, a statement as to whether there is in force a sole solicitor endorsement and such other information as may be specified in regulations¹³ must be contained in the register kept by the Authority¹⁴.

1 The Solicitors Act 1974 s 9 is substituted by the Legal Services Act 2007 Sch 16 paras 1, 9 as from a day to be appointed under s 211(1). As the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1984 s 9 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the issuing of practising certificates is the Solicitors Regulation Authority (see PARA 619). As to the meaning of the 'Charter' see PARA 835 note 1.

3 Solicitors Act 1974 s 9(1). As to the register see PARA 621. The application must be in the prescribed form and must be correctly completed and accompanied by such additional information, documents and references as the Solicitors Regulation Authority may specify: Practising Certificate Regulations 1995 reg 5. It must be personally signed by the applicant unless (1) another solicitor has been given written permission by the Authority, in exceptional circumstances, to sign on the applicant's behalf; or (2) the form used is completed on behalf of a number of applicants in one practice, and the person signing the form is a solicitor authorised by the practice, and has the consent of all the persons named in the form, to sign on their behalf: reg 10. These regulations were made on 24 January 1995 by the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice, under the Solicitors Act 1974 s 14(2) (see PARA 669) and s 28 (see PARA 662), and apply to all practising certificates and applications for practising certificates for any period commencing on or after 1 November 1995: Practising Certificate Regulations 1995 reg 1.

4 Solicitors Act 1974 s 9(5). As to professional discipline see PARA 906 et seq.

5 In cases to which Solicitors Act 1974 s 12(1) (prospectively repealed) applies: see PARA 898.

6 In cases otherwise ordered by the Master of the Rolls or the Authority.

7 Solicitors Act 1974 s 12(4); Practising Certificate Regulations 1995 reg 8(1). Unless the Authority dispenses with this requirement, the notice must be accompanied by:

26 (1) a certificate of fitness completed by two practising solicitors to whom the applicant is personally known but who are not:

9. (a) related to, or employed by, him or fellow employees junior in rank or a person to whom the Solicitors Act 1974 s 12 (as amended) applies; or

10. (b) his partner, fellow partner, employer or fellow employee; and
10
- 27 (2) such additional information, documents and references as the Authority may specify:
Practising Certificate Regulations 1995 reg 8(2), (3).
- 8 Practising Certificate Regulations 1995 reg 7(1). The replacement date for every practising certificate is the 31 October following the issue of the applicant's current practising certificate: reg 3. If no application is received from a solicitor with a current practising certificate by the replacement date, the Authority may terminate that solicitor's current practising certificate: reg 7(2).
- 9 See note 1.
- 10 le the roll of solicitors see PARA 621.
- 11 Solicitors Act 1974 s 9(1) (as prospectively substituted: see note 1). An application under s 9 must be made in accordance with s 28 (see PARA 671) and accompanied by the appropriate fee: s 9(3) (as so prospectively substituted). 'Appropriate fee', in relation to an application, means any fee payable under s 11(1) (see PARA 670) in respect of the practising certificate applied for an any additional fee payable under s 11(4) in respect of the application: s 9(4) (as so prospectively substituted).
- 12 Solicitors Act 1974 s 9(2) (as prospectively substituted: see note 1). As to sole solicitor certificates see PARA 673 et seq.
- 13 Regulations about the keeping of a register under the Solicitors Act 1974 s 10A may (among other things):
 - 28 (1) make provision about the form in which the register is to be kept and the manner in which entries are to be made, altered and removed (s 28(3C)(a) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 20(1), (5)));
 - 29 (2) require information of a specified kind to be included in entries in the register (s 28(3C)(b) (so prospectively added));
 - 30 (3) require information (or information of a specified description) on the register to be made available to the public (s 28(3C)(c) (so prospectively added));
 - 31 (4) specify the manner in which it is to be made so available and require it to be made so available during office hours and without charge (s 28(3C)(d) (so prospectively added)).
- 14 See the Solicitors Act 1974 s 10A (prospectively added); and PARA 621.

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

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669. Issue of practising certificate.

Until a day to be appointed the following provisions have effect¹. Subject to the payment of the prescribed fees² and provided that no discretion is vested in the Solicitors Regulation Authority³ with respect to the issue of a practising certificate in the particular case⁴, the Authority must within 21 days of receipt of an application for a practising certificate issue such a certificate in the prescribed form⁵ if it is satisfied that:

- 682 (1) the applicant's name is on the roll⁶;
- 683 (2) he is not suspended from practice⁷;
- 684 (3) his application complies with any regulations made in respect of practising certificates and applications for them⁸;
- 685 (4) he is complying with such training regulations as may apply to him⁹;
- 686 (5) he is complying with or is exempt from compliance with any indemnity rules¹⁰; and
- 687 (6) he has paid to the Authority the annual contribution¹¹ to the compensation fund and any special levy¹² which may be payable in addition to the annual contribution¹³.

As from a day to be appointed the following provisions have effect¹⁴. Where an application is made for a practising certificate to be issued¹⁵, the Authority must issue a practising certificate to the applicant if it is satisfied that the applicant is not suspended from practice and is complying with any prescribed requirements imposed on the applicant¹⁶. A practising certificate issued to an applicant of a prescribed description¹⁷ must be issued subject to any conditions prescribed in relation to applicants of that description¹⁸.

In such circumstances as may be prescribed¹⁹, the Authority must, if it considers it is in the public interest to do so refuse to issue a practising certificate under this section or where it decides to issue a practising certificate, issue it subject to one or more conditions²⁰.

The conditions which may be imposed include:

- 688 (a) conditions requiring the person to whom the certificate is issued to take specified²¹ steps that will, in the opinion of the Authority, be conducive to the carrying on by that person of an efficient practice as a solicitor (including, if the certificate has a sole solicitor endorsement, an efficient practice as a sole solicitor)²²;
- 689 (b) conditions which prohibit that person from taking any specified steps, except with the approval of the Authority²³.

1 The Solicitors Act 1974 s 10 is substituted by the Legal Services Act 2007 Sch 16 paras 1, 9, 11 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to such fees see the Practising Certificate Fee Order and Regulations 2007; and PARA 670.

3 The Solicitors Act 1974 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the issuing of practising certificates is the Solicitors

Regulation Authority (see PARA 619). As to the meaning of the 'Charter' see PARA 835 note 1. As to the discretion with regard to issuing practising certificates see s 12; and PARA 898.

4 As to cases in which this discretion vests in the Authority see the Solicitors Act 1974 s 12 (prospectively repealed); and PARA 898.

5 Every practising certificate must specify its commencement date, its replacement date, and any conditions imposed by the Authority: Practising Certificate Regulations 1995 reg 4. The certificate is sent by post to the applicant at his principal practising address or to such other address as may be specified by or on behalf of the applicant in writing to the Authority: reg 12. Until a day to be appointed every practising certificate has effect from the beginning of the day (the 'commencement date') on which it is issued: Solicitors Act 1974 s 14(1) (s 14 substituted by the Courts and Legal Services Act 1990 s 86 with respect to certificates issued from 1 November 1991; and prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 18, Sch 23). The Master of the Rolls may, with the concurrence of the Secretary of State and the Lord Chief Justice, make regulations (Solicitors Act 1974 s 14(2) (as so substituted; amended by SI 2003/1887; and prospectively repealed)):

32 (1) prescribing the date (the 'replacement date') by which each solicitor who has a practising certificate which is for the time being in force must apply for a new practising certificate if he wishes to continue to have one (Solicitors Act 1974 s 14(2)(a) (as so substituted and prospectively repealed)); and

33 (2) requiring every practising certificate to specify its replacement date (Solicitors Act 1974 s 14(2)(b) (as so substituted and prospectively repealed)).

Without prejudice to the Solicitors Act 1974 s 28(1) (see PARAS 661-662, 671) such regulations may:

34 (a) provide for different replacement dates for different categories of solicitor or in different circumstances (s 14(4)(a) (as so substituted; and prospectively repealed));

35 (b) provide for the Authority to specify different replacement dates to those prescribed by the regulations in respect of individual solicitors (s 14(4)(b) (as so substituted; and prospectively repealed)); and

36 (c) make such transitional, incidental and supplemental provision, in connection with any provision for different replacement dates, including different dates specified by the Authority, as the Master of the Rolls considers expedient (s 14(4)(c) (as so substituted; and prospectively repealed)).

The Authority must enter the commencement date and replacement date of each practising certificate in the register kept under s 9 (see PARA 668) by the Authority: s 14(3) (as so substituted; and prospectively repealed). Where a practising certificate is in force with respect to a solicitor, the Authority may withdraw it if the replacement date for that certificate has passed but he has not applied for a new practising certificate: s 14(5) (as so substituted; and prospectively repealed).

A practising certificate expires:

37 (i) immediately when a solicitor's name is removed from or struck off the roll (s 14(6)(a) (as so substituted; and prospectively repealed));

38 (ii) immediately where the certificate is withdrawn (s 14(6)(b) (as so substituted; and prospectively repealed));

39 (iii) on the commencement of a new practising certificate where one is issued to the solicitor (s 14(6)(c) (as so substituted; and prospectively repealed));

40 (iv) where the Authority refuses to issue a solicitor with a new practising certificate, either immediately after the replacement date for the existing certificate has passed, or, if that date has already passed, immediately on the taking of the decision not to issue him with a new certificate (s 14(6)(d) (as so substituted; and prospectively repealed)).

Where any practising certificate expires in the circumstances mentioned in head (i), (ii) or (iv) above, the date of its expiry must be entered in the register: s 14(7) (as so substituted; and prospectively repealed).

6 Solicitors Act 1974 s 10(1)(a).

7 Solicitors Act 1974 s 10(1)(b). As to suspension see PARA 909.

8 Solicitors Act 1974 s 10(1)(c). As to the power to make regulations see s 28(1)(c); and PARA 671.

9 Solicitors Act 1974 s 10(1)(d). At any time when regulations under s 28 specify a training condition or training conditions, any practising certificate issued to an applicant by the Authority must be issued subject to that condition or one of those conditions if it appears to the Authority that training regulations will apply to him at the end of 21 days from the Authority's receipt of his application: s 10(2). As to the power to make training regulations see s 2; and PARA 622; and as to the regulations so made see PARA 644 et seq.

10 Solicitors Act 1974 s 10(1)(e). As to indemnity rules see PARA 853. At any time when regulations under s 28 specify an indemnity condition or indemnity conditions, any practising certificate issued to an applicant by the Authority must be issued subject to that condition or to one of those conditions if it appears to the Authority that he will be exempt from indemnity rules at the end of 21 days from the Authority's receipt of his application: s 10(3).

11 On each occasion on which he applies for a practising certificate a solicitor must pay to the Authority an annual contribution to the compensation fund: see the Solicitors Act 1974 Sch 2 para 2(1)(a) (Sch 2 is prospectively repealed by the Legal Services Act Sch 16 paras 1, 79, Sch 23). However, this contribution and the special levy are not payable in respect of the first three practising certificates after a solicitor's admission, and are payable at half the normal rate in respect of the next three certificates: see the Solicitors Act 1974 Sch 2 para 2(2), (3) (as so prospectively repealed). A solicitor may be required to pay an annual contribution of a reduced amount where that payment is made with respect to a practising certificate which has a replacement date which is less than 12 months after the replacement date of the solicitor's previous certificate: see Sch 2 para 2(3A) (added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 18; and so prospectively repealed). Where it appears from his application for a practising certificate that a solicitor has not held or received clients' money at any time during the period specified in the application, he may be required to pay an annual contribution of a specified reduced amount on that application, or to pay no annual contribution thereon: see the Solicitors Act 1974 Sch 2 para 2(3B) (as so added and prospectively repealed).

12 Where it appears from his application for a practising certificate that he has held or received clients' money at any time during the period specified in the application, a solicitor must, on making the application, also pay to the Authority before the issue of the certificate, if it so requires, a further contribution (a 'special levy') of an amount determined by them: Solicitors Act 1974 Sch 2 para 2(1)(b) (amended by the Administration of Justice Act 1985 ss 8, 67(2), Sch 1 para 14, Sch 8 Pt III; and prospectively repealed: see note 11). As to payment at a reduced amount see note 11.

13 Neither the annual contribution nor the special levy is payable by any solicitor who is a Crown prosecutor: Sch 2 para 2(2A) (added by the Prosecution of Offences Act 1985 s 4(6); and prospectively repealed (see note 11)).

14 See note 1.

15 I.e an application under the Solicitors Act 1974 s 9 (see PARA 668).

16 Solicitors Act 1974 s 10(1) (as prospectively substituted: see note 1).

17 I.e prescribed by regulations under the Solicitors Act 1974 s 28 (see PARA 671): s 10(5) (as prospectively substituted: see note 1).

18 Solicitors Act 1974 s 10(2) (as prospectively substituted: see note 1).

19 I.e prescribed by regulations under the Solicitors Act 1974 s 28 (see PARA 671): s 10(5) (as prospectively substituted: see note 1).

20 Solicitors Act 1974 s 10(3) (as prospectively substituted: see note 1).

21 'Specified', in relation to a condition imposed on a practising certificate, means specified in the condition: Solicitors Act 1974 s 10(5) (as prospectively substituted: see note 1).

22 Solicitors Act 1974 s 10(4)(a) (as prospectively substituted: see note 1).

23 Solicitors Act 1974 s 10(4)(b) (as prospectively substituted: see note 1).

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

669-670 Issue of practising certificate, Fees

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(2) TRAINING AND QUALIFICATION/(vii) Practising Certificates/670. Fees.

670. Fees.

Until a day to be appointed the following provisions have effect¹. There is payable in advance to the Solicitors Regulation Authority², in respect of each practising certificate, such fee as may be determined by order³. Such an order may specify reduced fees for practising certificates in specified circumstances⁴. Where such an order specifies a reduced fee in the case of a solicitor whose income from his practice as a solicitor is, during such period as may be specified, less than an amount specified, then the question whether, for the purposes of any such order, the income of a solicitor during the specified period falls below the specified amount is to be determined in accordance with regulations⁵. The fees must be applied in such manner as the Authority thinks fit for the purposes of⁶:

- 690 (1) the regulation, accreditation, education and training of solicitors and those wishing to become solicitors, including the maintaining and raising of their professional standards and giving advice on practice management and practical support for solicitors' practices⁷;
- 691 (2) the participation by the Authority in law reform and the legislative process⁸;
- 692 (3) the provision by solicitors and those wishing to become solicitors of free legal services to the public⁹;
- 693 (4) the promotion of the protection by law of human rights and fundamental freedoms¹⁰;
- 694 (5) the promotion by the Authority of the professional interests of solicitors through discussion with, and participation in the activities of, relevant national and international bodies, governments and the legal professions of other jurisdictions¹¹.

As from a day to be appointed the following provisions have effect¹². Before a practising certificate is issued, there must be paid to the Authority in respect of the certificate a fee of such an amount as the Authority may from time to time determine and different fees may be specified for different categories of applicant and in respect of different circumstances¹³. Under the following circumstances the application must be accompanied by an additional fee of such amount as the Authority from time to time determines:

- 695 (a) where the solicitor has failed to deliver an accountant's report required by rules¹⁴ by such time as may be prescribed by those rules¹⁵;
- 696 (b) where a practising certificate has not been issued by the Authority to the solicitor since the Authority became aware of the failure¹⁶.

1 The Solicitors Act 1974 s 11 is substituted by the Legal Services Act 2007 Sch 16 paras 1, 11 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 11 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the issuing of practising certificates is the Solicitors Regulation Authority (see PARA 619). As to the meaning of the 'Charter' see PARA 835 note 1.

3 See the Solicitors Act 1974 s 11(1). The fee is determined by the Master of the Rolls, with the concurrence of the Secretary of State and the Lord Chief Justice: see s 11(1) (amended by SI 2003/1887). See the Practising Certificate Fee Order and Regulations 2007. The Authority must submit annual accounts of fees to the Master of

the Rolls, the Secretary of State and the Lord Chief Justice and a copy must be available for inspection by any solicitor: see the Solicitors Act 1974 s 11(4).

4 See the Solicitors Act 1974 s 11(2) (substituted by the Courts and Legal Services Act 1990 s 87; and amended by SI 2003/1887).

5 The regulations made by the Master of the Rolls with the concurrence of the Secretary of State and the Lord Chief Justice: see the Solicitors Act 1974 s 11(2A), (2B) (added by the Courts and Legal Services Act 1990 s 87; and amended by SI 2003/1887).

6 Until a day to be appointed the Secretary of State may by order amend the Solicitors Act 1974 s 11(3) by substituting for the purposes referred to in it (at any time):

41 (1) the purposes of the regulation, education and training of solicitors and those wishing to become solicitors; or

42 (2) both those purposes and such other purposes as the Secretary of State considers appropriate: Access to Justice Act 1999 s 47(1) (amended by SI 2003/1887; and prospectively repealed by the Legal Services Act 2007 Sch 23).

No such order must be made unless the Secretary of State has consulted the Master of the Rolls and the Solicitors Regulation Authority and a draft of the order has been approved by the House of Parliament: see the Access to Justice Act 1999 s 47(2) (amended by SI 2003/1887; and so prospectively repealed).

7 Solicitors Act 1974 s 11(3)(a) (added by SI 2002/3235).

8 Solicitors Act 1974 s 11(3)(b) (as added: see note 6).

9 Solicitors Act 1974 s 11(3)(c) (as added: see note 6).

10 Solicitors Act 1974 s 11(3)(d) (as added: see note 6).

11 Solicitors Act 1974 s 11(3)(e) (as added: see note 6).

12 See note 1.

13 Solicitors Act 1974 s 11(1), (2) (as prospectively substituted: see note 1).

14 The by rules under the Solicitors Act 1974 s 34(1) (see PARA 847).

15 See the Solicitors Act 1974 s 11(3)(a), (4) (as prospectively substituted: see note 1).

16 See the Solicitors Act 1974 s 11(3)(b), (4) (as prospectively substituted: see note 1).

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

669-670 Issue of practising certificate, Fees

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(2) TRAINING AND QUALIFICATION/(vii) Practising Certificates/671. Making of regulations.

671. Making of regulations.

Regulations may be made¹ about practising certificates and the keeping of the practice certificate register². As from a day to be appointed the following provisions have effect³. Regulations may be made about sole solicitor endorsements and applications for them⁴. Regulations about practising certificates or sole solicitor endorsements may (among other things):

- 697 (1) prescribe the form and manner in which applications for, or relating to, practising certificates or sole solicitor endorsements are to be made⁵;
- 698 (2) prescribe information which must be included in or accompany such applications⁶;
- 699 (3) make provision about time limits for dealing with such applications, and confer on a person power to extend or bring forward such a time limit in prescribed circumstances⁷;
- 700 (4) prescribe the requirements which applicants for practising certificates must satisfy before they may be issued with a practising certificate⁸;
- 701 (5) prescribe descriptions of applicants, and conditions in relation to them for the purposes in which⁹ practising certificates must be issued subject to prescribed conditions¹⁰;
- 702 (6) prescribe the descriptions of applicants, and the conditions in relation to them¹¹, in which a practising certificate endorsed with a sole solicitor endorsement after it was issued must be made subject to prescribed conditions¹²;
- 703 (7) prescribe the circumstances¹³ in which an application may be refused etc in the public interest¹⁴;
- 704 (8) make provision about when conditions imposed on practising certificates take effect (including provision conferring power on the Solicitors Regulation Authority to direct that a condition is not to have effect until the conclusion of any appeal in relation to it)¹⁵;
- 705 (9) make provision for the commencement, duration, replacement, withdrawal and expiry of practising certificates or sole solicitor endorsements¹⁶;
- 706 (10) prescribe the circumstances¹⁷ in which conditions can be imposed during the period of practising certificate¹⁸;
- 707 (11) require solicitors who hold practising certificates to notify the Authority of such matters as may be prescribed, at such times, or in such circumstances as may be prescribed¹⁹.

1 Until a day to be appointed such regulations are made by the Master of the Rolls with the concurrence of the Secretary of State and the Lord Chief Justice: Solicitors Act 1974 s 28(1) (amended by SI 2003/1887). As from a day to be appointed the Solicitors Act 1974 s 28 is further amended by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (2), Sch 23 and regulations may instead be made by the Society (ie the Law Society (see the Solicitors Act 1974 s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619). Regulations under s 28 may make provision for appeals to the High Court against decisions made by the Authority under the regulations and the decision of the High Court is final: s 28(3D), (3F) (prospectively added: see note 3). In relation to such an appeal the High Court may make such order as it thinks fit as to payment of costs: s 28(3E) (so prospectively added). Regulations under s 28 may:

43 (1) provide for a person to exercise a discretion in dealing with any matter (s 28(3G)(a) (so prospectively added));

- 44 (2) include incidental, supplementary and consequential provision (s 28(3G)(b) (so prospectively added));
- 45 (3) make transitory or transitional provision and savings (s 28(3G)(c) (so prospectively added));
- 46 (4) make provision generally or only in relation to specified cases or subject to specified exceptions (s 28(3G)(d) (so prospectively added));
- 47 (5) make different provision for different cases (s 28(3G)(e) (so prospectively added)).

2 Solicitors Act 1974 s 28(1)(c), (d). Until a day to be appointed regulations may also be made regarding applications for practising certificates: s 28(1)(c) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (2)(c), Sch 23). The power under the Solicitors Act 2007 s 28(1) includes power to specify (1) one or more conditions ('training conditions') to be imposed on the issue of practising certificates to solicitors to whom training regulations apply; and (2) one or more conditions ('indemnity conditions') to be imposed on the issue of practising certificates to solicitors who are exempt from indemnity rules: s 28(2) (prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (3), Sch 23). As to the keeping of the practising certificate register see the Solicitors Act 1974 ss 9, 10A; and PARAS 621, 668.

3 The Solicitors Act 1974 s 28(1)(ca), (3B)-(3G) are added by the Legal Services Act 2007 Sch 16 paras 1, 30(1), (2)(d), (5) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

4 Solicitors Act 1974 s 28(1)(ca) (prospectively added: see note 3). As to sole solicitor endorsements see s 1B (prospectively added); and PARA 673.

5 Solicitors Act 1974 s 28(3B)(a) (prospectively added: see note 3).

6 Solicitors Act 1974 s 28(3B)(b) (prospectively added: see note 3).

7 Solicitors Act 1974 s 28(3B)(c) (prospectively added: see note 3).

8 Solicitors Act 1974 s 28(3B)(d) (prospectively added: see note 3).

9 le for the purposes of the Solicitors Act 1974 s 10(2) (see PARA 669).

10 Solicitors Act 1974 s 28(3B)(e) (prospectively added: see note 3).

11 le for the purposes of the Solicitors Act 1974 s 13ZA(5) (see PARA 674).

12 Solicitors Act 1974 s 28(3B)(f) (prospectively added: see note 3).

13 le for the purposes of the Solicitors Act 1974 s 10(3) (see PARA 669).

14 Solicitors Act 1974 s 28(3B)(g) (prospectively added: see note 3).

15 Solicitors Act 1974 s 28(3B)(h) (prospectively added: see note 3).

16 Solicitors Act 1974 s 28(3B)(i) (prospectively added: see note 3).

17 le for the purposes of the Solicitors Act 1974 s 13A(2) (see PARA 899).

18 Solicitors Act 1974 s 28(3B)(j) (prospectively added: see note 3).

19 Solicitors Act 1974 s 28(3B)(k) (prospectively added: see note 3).

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

671 Making of regulations

TEXT AND NOTE 19--The power to make regulations under the Solicitors Act 1974 s 28, so far as relating to the matters mentioned in head (11), has effect with respect to registered foreign lawyers as it has effect with respect to solicitors, except that the reference to practising certificates is to be read as a reference to registration in the register of foreign lawyers: Registered Foreign Lawyers Order 2009, SI 2009/1589, art 4.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(2) TRAINING AND QUALIFICATION/(vii) Practising Certificates/672. The register as evidence.

672. The register as evidence.

Until a day to be appointed the following provisions have effect¹. Any list purporting to be published by authority of the Solicitors Regulation Authority² is evidence, until the contrary is proved, that every person whose name appears in it as a solicitor holding a certificate for the current year issued before 2 January in that year is a solicitor who holds such a certificate³. The absence from any such list of the name of any person is evidence that that person is not qualified to practise as a solicitor under a certificate for the current year, until the contrary is proved⁴, but an extract from the roll certified as correct by Authority is evidence of the facts appearing in the extract⁵.

As from a day to be appointed the following provisions have effect⁶. An extract from the register of holders of practising certificates⁷ which is certified as correct by the Authority is evidence of the matters mentioned in it⁸. A certificate from the Authority stating that a person is or was registered in the register⁹ is evidence of the matters stated¹⁰.

1 The Solicitors Act 1974 s 18 is substituted by the Legal Services Act 2007 Sch 16 paras 1, 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 18 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 Solicitors Act 1974 s 18(1). A misstatement in such a list as to the date of admission of a solicitor is not a libel: *Raven v Stevens & Sons* (1886) 3 TLR 67.

4 Solicitors Act 1974 s 18(2); *R v Wenham* (1866) 10 Cox CC 222.

5 Solicitors Act 1974 s 18(2).

6 See note 1.

7 ie the register kept under the Solicitors Act 1974 s 10A (prospectively added) (see PARA 621).

8 Solicitors Act 1974 s 18(1) (prospectively substituted: see note 1).

9 ie the register kept under the Solicitors Act 1974 s 10A (prospectively added) (see PARA 621).

10 Solicitors Act 1974 s 18(2) (prospectively substituted: see note 1).

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(2) TRAINING AND QUALIFICATION/(viii) Sole Solicitor Certificates/673. Sole solicitor.

(viii) Sole Solicitor Certificates

673. Sole solicitor.

As from a day to be appointed¹ rules² must provide that a solicitor may not practise as a sole solicitor unless he has in force a practising certificate³ and an endorsement of that certificate (a 'sole solicitor endorsement') by the Solicitors Regulation Authority⁴ authorising him to so practise⁵. The rules may provide that, for the purposes of the rules and the Solicitors Act 1974 a solicitor is not to be regarded as practising as a sole solicitor in such circumstances as may be prescribed by the rules⁶. The rules must prescribe the circumstances in which a solicitor may be regarded by the Authority as suitable to be authorised to practise as a sole solicitor⁷.

1 The Solicitors Act 1974 s 1B is added by the Legal Services Act 2007 Sch 16 paras 1, 3 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The rules under the Solicitors Act 1974 s 31 (see PARA 828).

3 As to practising certificates see PARA 669.

4 The Solicitors Act 1984 s 1B refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the issuing of practising certificates is the Solicitors Regulation Authority (see PARA 619).

5 Solicitors Act 1974 s 1B(1) (prospectively added: see note 1).

6 Solicitors Act 1974 s 1B(2) (prospectively added: see note 1).

7 Solicitors Act 1974 s 1B(3) (prospectively added: see note 1).

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(2) TRAINING AND QUALIFICATION/(viii) Sole Solicitor Certificates/674. Application to practise as sole practitioner.

674. Application to practise as sole practitioner.

As from a day to be appointed the following provisions have effect¹. Unless he is suspended from practice as a sole solicitor², a solicitor whose practising certificate for the time being in force (his 'current certificate') does not have a sole solicitor endorsement³, may apply to the Solicitors Regulation Authority⁴ for such an endorsement⁵. A person who makes such an application may appeal to the High Court against a decision to refuse the application⁶.

Where a sole solicitor endorsement is granted to an applicant of a prescribed⁷ description, the applicant's practising certificate must have effect subject to any conditions prescribed in relation to applicants of that description⁸. A person who makes an application may appeal to the High Court against a decision to impose such a condition on a practising certificate⁹.

On an appeal the High Court may affirm the decision of the Authority, direct the Authority to grant a sole solicitor endorsement, direct that the applicant's practising certificate is to have effect subject to such conditions (if any) as the High Court thinks fit, or make such other order as the High Court thinks fit and the decision of the High Court is final¹⁰.

1 The Solicitors Act 1974 s 13ZA is added by the Legal Services Act 2007 Sch 16 paras 1, 15 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 See the Solicitors Act 1974 s 13ZA(3) (prospectively added: see note 1).

3 As to the meaning of 'sole solicitor endorsement' see PARA 673. For the purposes of the Solicitors Act 1974 s 13ZA(1) a practising certificate with a sole solicitor endorsement which is suspended is to be treated as having such an endorsement: s 13ZA(2) (prospectively added: see note 1).

4 The Solicitors Act 1974 s 13ZA refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible is the Solicitors Regulation Authority (see PARA 619).

5 Solicitors Act 1974 s 13ZA(1) (prospectively added: see note 1). An application must be made in accordance with regulations under s 28 (see PARA 662) and be accompanied by any fee payable under s 13ZB in respect of the endorsement applied for: s 13ZA(4) (as so prospectively added).

6 Solicitors Act 1974 s 13ZA(6)(a) (prospectively added: see note 1). The Solicitors Regulation Authority may by rules make provision, as respects any application under s 13ZA that is neither granted nor refused by the Authority within such period as may be specified in the rules, for enabling an appeal to be brought under s 13ZA in relation to the application as if it had been refused by the Authority: s 13ZA(7) (as so prospectively added).

7 'Prescribed' means prescribed by regulations under the Solicitors Act 1974 s 28(3B)(f) (prospectively added) (see PARA 662): s 13ZA(5) (prospectively added: see note 1).

8 Solicitors Act 1974 s 13ZA(5) (prospectively added: see note 1).

9 Solicitors Act 1974 s 13ZA(6)(b) (prospectively added: see note 1).

10 See the Solicitors Act 1974 s 13ZA(8), (10) (prospectively added: see note 1). In relation to an appeal under s 13ZA the High Court may make such order as it thinks fit as to payment of costs: s 13ZA(9) (as so prospectively added).

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(2) TRAINING AND QUALIFICATION/(viii) Sole Solicitor Certificates/675. Fees.

675. Fees.

As from a day to be appointed the following provisions have effect¹. Before a sole solicitor endorsement is granted² there must be paid to the Solicitors Regulation Authority³ in respect of the endorsement a fee of such amount as the Authority may from time to time determine⁴ and different fees may be specified for different categories of applicant and in different circumstances⁵.

1 The Solicitors Act 1974 s 13ZB is added by the Legal Services Act 2007 Sch 16 paras 1, 15 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Is granted under the Solicitors Act 1974 s 13ZA (prospectively added) (see PARA 674).

3 The Solicitors Act 1974 s 13ZB refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible is the Solicitors Regulation Authority (see PARA 619).

4 Solicitors Act 1974 s 13ZB(1) (prospectively added: see note 1). If a fee payable under s 13ZB would not otherwise be a practising fee for the purposes of the Legal Services Act 2007 s 51 (see PARA 414), it is to be treated for the purposes of s 51 as such a fee: Solicitors Act 1974 s 13ZB(3) (as so prospectively added). As to the meaning of 'practising fee' see the Legal Services Act 2007 s 51; and PARA 414 (definition applied by the Solicitors Act 1974 s 13ZB(4) (as so prospectively added)).

5 Solicitors Act 1974 s 13ZB(2) (prospectively added: see note 1).

UPDATE

668-675 Application for practising certificate ... Fees

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(i) Framework of Practice/676. Solicitors practising from an office in England and Wales.

(3) BUSINESS ARRANGEMENTS

(i) Framework of Practice

676. Solicitors practising from an office in England and Wales.

A solicitor may practise from an office in England and Wales in the following ways only¹:

- 708 (1) as a sole principal²;
- 709 (2) as a partner in a partnership³;
- 710 (3) as a director⁴, member⁵ or shareowner⁶ of a company which is a recognised body⁷;
- 711 (4) as a member of a limited liability partnership⁸ which is a recognised body⁹;
- 712 (5) in the employment of any firm¹⁰ in which a solicitor or a recognised European lawyer would be permitted to participate¹¹ as a sole principal¹², partner¹³, director, member or shareowner, for practice from an office in England and Wales¹⁴; or
- 713 (6) in any other in-house practice work¹⁵.

1 A solicitor must not be a partner in a partnership which has a separate legal identity, if the partnership has an office in England and Wales, or be a director, member or owner of a body corporate which has an office in England and Wales and is not a recognised body, unless in the capacity of an in-house solicitor: Solicitors' Code of Conduct 2007 r 12.01(2). As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq.

2 Solicitors' Code of Conduct 2007 r 12.01(1)(a).

3 Solicitors' Code of Conduct 2007 r 12.01(1)(b). Such a partnership must consist of:

- 48 (1) solicitors with or without registered European lawyers and/or recognised bodies;
- 49 (2) solicitors and registered foreign lawyers with or without registered European lawyers;
- 50 (3) solicitors, registered European lawyers and non-registered European lawyers, with or without registered foreign lawyers; or
- 51 (4) solicitors, registered European lawyers, non-registered European lawyers and recognised bodies (r 12.01(1)(b)(i)-(iv)).

'Partnership' means an unincorporated body that falls within the definition of partnership in the Partnership Act 1890 s 1 (see **PARTNERSHIP** vol 79 (2008) PARA 1) but excludes a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq): Solicitors' Code of Conduct 2007 r 24.01.

4 'Director' means a director of a company, and includes the director of a recognised body which is a company; and in relation to *societa Europaea* includes: (1) in a two-tier system, a member of the management organ and a member of the supervisory organ; and (2) in a one-tier system, a member of the administrative organ: Solicitors' Code of Conduct 2007 r 24.01. '*Societas Europaea*' means a European public limited liability company within the meaning of EC Council Regulation 2157/01 (OJ L294 10.11.2001 p 1) on the Statute for a European company: Solicitors' Code of Conduct 2007 r 24.01. As to the meaning of 'recognised body' see PARA 687 note 3. See also **COMPANIES** vol 15 (2009) PARA 1633.

5 'Member' in relation to a recognised body, means a person who has agreed to be a member of a company and whose name is entered in the company's register of members or a member of a limited liability company

incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq): Solicitors' Code of Conduct 2007 r 24.01.

6 'Shareowner' means: (1) a member of a recognised body which is a company with a share capital, who owns a share in the body; or (2) a person who is not a member of a company with a share capital, but owns a share in the body, which is held by a member as nominee: Solicitors' Code of Conduct 2007 r 24.01.

7 Solicitors' Code of Conduct 2007 r 12.01(1)(c).

8 le one incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq).

9 Solicitors' Code of Conduct 2007 r 12.01(1)(d).

10 'Firm' means any business which carried on the practice of a solicitor or registered European lawyer, except in-house practice: Solicitors' Code of Conduct r 24.01. As to the meaning of 'practice' see PARA 874 note 2.

11 le participate under the Solicitors' Code of Conduct 2007 r 12.

12 'Principal' means a sole practitioner or partner in a partnership: Solicitors' Code of Conduct 2007 r 24.01.

13 'Partner' includes both an equity partner and a salaried partner in a partnership: Solicitors' Code of Conduct 2007 r 24.01.

14 Solicitors' Code of Conduct 2007 r 12.01(1)(e).

15 Solicitors' Code of Conduct 2007 r 12.01(1)(f). Any other in-house practice work mentioned in the text refers to work for the employer of the relevant solicitor or as permitted by r 13 (see PARA 686). 'In-house practice' means:

52 (1) a solicitor's employment in England and Wales as a solicitor, or a registered European lawyer's employment in England and Wales as a lawyer of an Establishment Directive state, by any business which is not: (a) the business of a solicitor or a registered European lawyer practising as a sole principal; (b) a recognised body; or (c) a partnership with at least one partner who is a practising solicitor, a registered European lawyer practising as such or a recognised body; and

53 (2) a solicitor's employment outside England and Wales as a solicitor, or a registered European lawyer's employment in Scotland or Northern Ireland as a lawyer of an Establishment Directive state, by any business which is not: (a) the business of a lawyer practising as a sole principal; (b) a partnership of lawyers, or of lawyers together with other persons, within r 12; or (c) a body corporate wholly owned, for the purpose of practising law, by lawyers, or by lawyers together with other persons, within r 12: r 24.01.

As to the meaning of 'Establishment Directive state' see PARA 874 note 2.

UPDATE

676-680 Framework of practice

Solicitors' Code of Conduct 2007 rr 12, 13, 15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(i) Framework of Practice/677. Solicitors practising from an office outside England and Wales.

677. Solicitors practising from an office outside England and Wales.

A solicitor may practise from an office outside England and Wales¹ in the following ways only:

714 (1) as a sole principal²;

715 (2) as a partner in a partnership consisting of:

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14. (a) practising lawyers³; and/or

15. (b) bodies corporate wholly owned and directed by lawyers for the purpose of practising law⁴; and/or

16. (c) partnerships which have separate legal identity, whose partners are all lawyers⁵;

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716 (3) as a partner in a partnership consisting of persons under head (2) above, together with other persons, provided that:

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17. (a) the partnership has no office in England and Wales⁶;

18. (b) a controlling majority of the partners are persons head (2) above⁷;

19. (c) the involvement of non-lawyers in the partnership does not put the lawyers in breach of any applicable local rules⁸; and

20. (d) if the partnership has an office in an Establishment Directive state⁹, the rules applying in that jurisdiction would permit local lawyers to enter into a partnership with similar involvement of non-lawyers¹⁰;

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717 (4) as a director or owner of a body corporate wholly owned and directed, for the purpose of practising law, by:

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21. (a) practising lawyers¹¹; and/or

22. (b) bodies corporate wholly owned and directed by lawyers for the purpose of practising law¹²; and/or

23. (c) partnerships which have separate legal identity, whose partners are all lawyers¹³;

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718 (5) as a director or owner of a body corporate wholly owned and directed, for the purpose of practising law, by persons under head (2) above, together with other persons, provided that:

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24. (a) the body corporate has no office in England and Wales¹⁴;

25. (b) a controlling majority of the directors and of the owners are persons under head (2) above¹⁵;

26. (c) the involvement of non-lawyers in the body corporate does not put the lawyer directors or owners in breach of any applicable local rules¹⁶; and

27. (d) if the body corporate has an office in an Establishment Directive state¹⁷, the rules applying in that jurisdiction would permit local lawyers to practise through a body corporate with similar involvement of non-lawyers¹⁸;

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- 719 (6) in the employment of any firm¹⁹ in which a solicitor or a registered European lawyer²⁰ would be permitted to participate under this rule as a sole principal, partner, director or owner, for practice as a solicitor from an office outside England and Wales or as a lawyer of an Establishment Directive state from an office in Scotland or Northern Ireland²¹; or
- 720 (7) in any other employment, provided that the solicitor undertake work only as permitted by the Solicitors' Code of Conduct 2007²² in relation to in-house practice overseas²³.

1 The Solicitors' Code of Conduct 2007 r 12 applies to an overseas practice: r 15.12. As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq. As to the meaning of 'overseas practice' see PARA 874 note 2.

2 Solicitors' Code of Conduct 2007 r 12.01(3)(a). As to the meaning of 'principal' see PARA 676 note 12.

3 Solicitors' Code of Conduct 2007 r 12.01(3)(b)(i). As to the meaning of 'partner' see PARA 676 note 13.

4 Solicitors' Code of Conduct 2007 r 12.01(3)(b)(ii).

5 Solicitors' Code of Conduct 2007 r 12.01(3)(b)(iii).

6 Solicitors' Code of Conduct 2007 r 12.01(3)(c)(i).

7 Solicitors' Code of Conduct 2007 r 12.01(3)(c)(ii).

8 Solicitors' Code of Conduct 2007 r 12.01(3)(c)(iii).

9 Ie a state to which EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained, applies (see PARA 534).

10 Solicitors' Code of Conduct 2007 r 12.01(3)(c)(iv).

11 Solicitors' Code of Conduct 2007 r 12.01(3)(d)(i).

12 Solicitors' Code of Conduct 2007 r 12.01(3)(d)(ii).

13 Solicitors' Code of Conduct 2007 r 12.01(3)(d)(iii).

14 Solicitors' Code of Conduct 2007 r 12.01(3)(e)(i).

15 Solicitors' Code of Conduct 2007 r 12.01(3)(e)(ii).

16 Solicitors' Code of Conduct 2007 r 12.01(3)(e)(iii).

17 Ie a state to which EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained, applies (see PARA 534).

18 Solicitors' Code of Conduct 2007 r 12.01(3)(e)(iv).

19 As to the meaning of 'firm' see PARA 676 note 10.

20 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

21 Solicitors' Code of Conduct 2007 r 12.01(3)(f). As to the meaning of 'practice' see PARA 874 note 2.

22 Ie as permitted by the Code of Conduct 2007 r 15.13. A solicitor may act as an in-house lawyer but only for:

54 (1) his employer (r 15.13(2)(a)(i));

55 (2) a company or organisation controlled by his employer or in which his employer has a substantial measure of control (r 15.13(2)(a)(ii));

56 (3) a company in the same group as his employer (r 15.13(2)(a)(iii));

57 (4) a company which controls his employer (r 15.13(2)(a)(iv)); or

58 (5) an employee (including a director or a company secretary) of a company or organisation under heads (1)-(4) above, provided that the matter relates to or arises out of the work of that company or organisation, does not relate to a claim arising as a result of a personal injury to the employee, and no charge is made for the work of the solicitor unless those costs are recoverable from another source (r 15.13(2)(a)(v)).

23 Solicitors' Code of Conduct 2007 r 12.01(3)(g). As to the meaning of 'in-house practice' see PARA 676 note 15.

UPDATE

676-680 Framework of practice

Solicitors' Code of Conduct 2007 rr 12, 13, 15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(i) Framework of Practice/678. Registered European lawyers.

678. Registered European lawyers.

A registered European lawyer¹ may practise as a lawyer of an Establishment Directive state² from an office in England and Wales in the following ways only³:

721 (1) as a sole principal⁴;

722 (2) as a partner in a partnership consisting of:

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28. (a) registered European lawyers, with or without solicitors and/or recognised bodies⁵;

29. (b) registered European lawyers and registered foreign lawyers⁶, with or without solicitors⁷;

30. (c) registered European lawyers and non-registered European lawyers, with or without solicitors and/or registered foreign lawyers⁸; or

31. (d) registered European lawyers, non-registered European lawyers and recognised bodies, with or without solicitors⁹;

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723 (3) as a director, member or shareowner of a company which is a recognised body¹⁰;

724 (4) as a member of a limited liability partnership¹¹ which is a recognised body¹²;

725 (5) in the employment of any firm¹³ in which a registered European lawyer or a solicitor would be permitted to participate under this rule as a sole principal, partner, director, member or shareowner, for practice from an office in England and Wales¹⁴; or

726 (6) in any other employment, provided that the solicitor undertakes work only for his employer¹⁵.

1 As to the meaning of 'registered European lawyer' see PARA 542 note 2. As to the register see PARA 627.

2 I.e. a state to which EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained, applies (see PARA 534).

3 A lawyer of an Establishment Directive state must not be a partner in a partnership which has a separate legal identity, if the partnership has an office in England and Wales, or be a director, member or owner of a body corporate which has an office in England and Wales and is not a recognised body, unless as an in-house lawyer: Solicitors' Code of Conduct 2007 r 12.02(2). The Code also provides for when a registered European lawyer can practise from an office in Scotland or Northern Ireland: see r 12.02(3). As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq. If a solicitor is registered in another state under EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) with the professional body for a local legal profession he may practise in-house to the extent that a member of that legal profession is permitted to do so: Solicitors' Code of Conduct 2007 r 15.13(2)(b).

4 Solicitors' Code of Conduct 2007 r 12.02(1)(a). As to the meaning of 'principal' see PARA 676 note 12.

5 Solicitors' Code of Conduct 2007 r 12.02(1)(b)(i).

6 As to the meaning of 'registered foreign lawyers' see PARA 628 note 2.

7 Solicitors' Code of Conduct 2007 r 12.02(1)(b)(ii).

8 Solicitors' Code of Conduct 2007 r 12.02(1)(b)(iii).

- 9 Solicitors' Code of Conduct 2007 r 12.02(1)(b)(iv).
- 10 Solicitors' Code of Conduct 2007 r 12.02(1)(c).
- 11 le one incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq).
- 12 Solicitors' Code of Conduct 2007 r 12.02(1)(d).
- 13 As to the meaning of 'firm' see PARA 676 note 10.
- 14 Solicitors' Code of Conduct 2007 r 12.02(1)(e). As to the meaning of 'practice' see PARA 874 note 2.
- 15 Solicitors' Code of Conduct 2007 r 12.02(1)(f). This also includes work permitted by r 13 (see PARA 686).

UPDATE

676-680 Framework of practice

Solicitors' Code of Conduct 2007 rr 12, 13, 15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(i) Framework of Practice/679. Registered foreign lawyers.

679. Registered foreign lawyers.

Practice as a foreign lawyer in the capacity of a registered foreign lawyer¹ is confined to:

- 727 (1) practice as a partner in a multi-national partnership² which has an office in England and Wales and which consists of:
 - 516 32. (a) solicitors and/or registered European lawyers³, together with registered foreign lawyers⁴; or
 - 33. (b) registered European lawyers, registered foreign lawyers and non-registered European lawyers, with or without solicitors⁵;
- 517 728 (2) practice as a director of a company which is a recognised body⁶; and
- 729 (3) practice as a member of a limited liability partnership⁷ which is a recognised body⁸;

and practising in such a capacity is subject to the Solicitors' Code of Conduct 2007 and regulation by the Solicitors Regulation Authority⁹.

A registered foreign lawyer is not practising in the capacity of a registered foreign lawyer if he provides services as a sole principal¹⁰, as a partner in a partnership in which none of the partners is a solicitor or a registered European lawyer, as a director of a company or a member of a limited liability partnership¹¹ which is not a recognised body, or as the employee of a business which is not the practice of a solicitor, a registered European lawyer or a recognised body¹².

1 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2. As to the meaning of 'practice' see PARA 874 note 2. As to the register see PARA 628.

2 As to the meaning of 'multi-national partnership' see the Courts and Legal Services Act 1990 s 89(9); and PARA 724 note 3 (definition applied by the Solicitors' Code of Conduct 2007 r 24.01).

3 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

4 Solicitors' Code of Conduct 2007 r 12.03(1)(a)(i). As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq.

5 Solicitors' Code of Conduct 2007 r 12.03(1)(a)(ii).

6 Solicitors' Code of Conduct 2007 r 12.03(1)(b). As to the meaning of 'recognised body' see PARA 687 note 3.

7 Ie one incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq).

8 Solicitors' Code of Conduct 2007 r 12.03(1)(c).

9 Solicitors' Code of Conduct 2007 r 12.03(1).

10 As to the meaning of 'principal' see PARA 676 note 12.

11 Ie one incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq).

12 Solicitors' Code of Conduct 2007 r 12.03(2). Such a person must not hold themselves out as a registered foreign lawyer or be regulated or registered with the Law Society or the Solicitors Regulation Authority: r 12.03(2). Nor may a person hold themselves as a registered foreign lawyer or be so regulated or registered, in the context of employment in the practice of a solicitor, a registered European lawyer or a recognised body or participation in any firm which operates wholly outside England and Wales: see r 12.03(3). If the registered foreign lawyer has a practice under r 12.03(1) and a business under r 12.03(2) he must comply with r 21 (see PARA 720 et seq). As to the meaning of 'firm' see PARA 676 note 10.

UPDATE

676-680 Framework of practice

Solicitors' Code of Conduct 2007 rr 12, 13, 15 amended on 31 March 2009.

679 Registered foreign lawyers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(i) Framework of Practice/680. Recognised bodies.

680. Recognised bodies.

A recognised body¹ may practise from an office in England and Wales² in the following ways only:

- 730 (1) as a stand-alone firm³;
- 731 (2) as a body corporate wholly owned by, and providing services in conjunction with:
 - 518 34. (a) the practice of a solicitor or a registered European lawyer⁴ as a sole principal⁵;
 - 35. (b) a partnership consisting of: (i) solicitors and/or registered European lawyers and/or recognised bodies; (ii) solicitors and/or registered European lawyers together with registered foreign lawyers; (iii) registered European lawyers and non-registered European lawyers, with or without solicitors and/or registered foreign lawyers; or (iv) registered European lawyers, non-registered European lawyers and recognised bodies, with or without solicitors⁶;
 - 36. (c) another recognised body⁷;
- 519 732 (3) as a partner in a partnership consisting of recognised bodies, with or without solicitors and/or registered European lawyers; or recognised bodies, registered European lawyers and non-registered European lawyers, with or without solicitors⁸;
- or
- 733 (4) as a member or shareowner of another recognised body⁹.

1 As to the meaning of 'recognised body' see PARA 687 note 3.

2 A recognised body which is incorporated in England and Wales may only practise from an office outside England and Wales as a stand-alone firm, in a partnership, as a member or shareowner of another recognised body or as a director or owner of a body corporate: Solicitors' Code of Conduct 2007 r 12.04(3). A recognised body incorporated outside England and Wales is subject to r 1.04 (see PARA 831), r 14 (see PARA 689) and r 15: r 12.04(4). The Solicitors' Code of Conduct 2007 r 12 applies to an overseas practice: r 15.12. As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq. As to the meaning of 'overseas practice' see PARA 874 note 2.

3 Solicitors' Code of Conduct 2007 r 12.04(1)(a). As to the meaning of 'firm' see PARA 676 note 10.

4 As to the meaning of 'registered European lawyer' see PARA 542 note 2. As to the meaning of 'practice' see PARA 874 note 2.

5 Solicitors' Code of Conduct 2007 r 12.04(1)(b)(i). As to the meaning of 'principal' see PARA 676 note 12.

6 Solicitors' Code of Conduct 2007 r 12.04(1)(b)(ii).

7 Solicitors' Code of Conduct 2007 r 12.04(1)(b)(iii).

8 Solicitors' Code of Conduct 2007 r 12.04(1)(c). However a recognised body must not practise as a partner in a partnership which has a separate legal identity, if the partnership has an office in England and Wales: r 12.04(2)(a).

9 Solicitors' Code of Conduct 2007 r 12.04(1)(d). However a recognised body must not practise as a director, member or owner of a body corporate which has an office in England and Wales and is not a recognised body: r 12.04(2)(b).

UPDATE

676-680 Framework of practice

Solicitors' Code of Conduct 2007 rr 12, 13, 15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(ii) Business Management/681. Supervision and management by principal.

(ii) Business Management

681. Supervision and management by principal.

A principal in a firm¹ must make provision for the effective management of the firm as a whole and in particular provide for:

- 734 (1) appropriate supervision over all staff and ensure adequate supervision and direction of clients' matters²;
- 735 (2) compliance with money laundering regulations³;
- 736 (3) compliance with key regulatory requirements⁴;
- 737 (4) the identification of conflicts of interest⁵;
- 738 (5) compliance with the requirements⁶ relating to client relations⁷;
- 739 (6) control of undertakings⁸;
- 740 (7) safekeeping of documents and assets entrusted to the firm⁹;
- 741 (8) compliance with the requirements¹⁰ relating to equality and diversity¹¹;
- 742 (9) training of individuals working in the firm to maintain competence¹²;
- 743 (10) financial control of budgets, expenditure and cash flow¹³;
- 744 (11) continuation of the practice in the event of absences and emergencies¹⁴;
- 745 (12) the management of risk¹⁵.

1 As to the meaning of 'principal' see PARA 676 note 12. As to the meaning of 'firm' see PARA 676 note 10.

2 See the Solicitors' Code of Conduct 2007 rr 5.01(1)(a), 5.03(1). The following must be qualified to supervise (ie have completed any training required by the Solicitors Regulation Authority and have been entitled to practise as a solicitor for at least 36 months in the last ten years):

- 59 (1) a sole principal (r 5.02(1)(a));
- 60 (2) one of the partners of a partnership (r 5.02(1)(b));
- 61 (3) one of the members of a recognised body which is a limited liability partnership (r 5.02(1)(c));
- 62 (4) one of the directors of a recognised body which is a company (r 5.02(1)(d));
- 63 (5) one of the solicitors or registered European lawyers employed by a law centre (r 5.02(1)(e)); or
- 64 (6) one in-house solicitor or in-house registered European lawyer in any department where solicitors and/or registered European lawyers, as part of that employment do publicly funded work or exercise or supervise the exercise of any right of audience or right to conduct litigation when advising or acting for members of the public (r 5.02(1)(f)).

The system of supervision established under r 5.03(1), (2) must include appropriate and effective procedures under which the quality of work undertaken for clients and members of the public is checked with reasonable regularity by suitably experienced and competent persons: r 5.03(3). Rule 5 does not apply to an overseas practice: r 15.05. As to the meaning of 'overseas practice' see PARA 874 note 2. However there is a requirement that a solicitor setting up an overseas practice must have been entitled to practise as a lawyer for a minimum of 36 months within the last ten years before setting up as a solicitor sole principal: r 15.05(2)(a). Likewise an overseas partnership must have at least one partner and a body corporate have at least one director or member who has been entitled to practise as a lawyer for a minimum of 36 months within the last ten years: see r 15.05(2). Furthermore, in relation to an overseas practice, a solicitor sole principal or partner or director,

as appropriate, must ensure that the firm is managed and supervised with a view to ensuring that its affairs are properly conducted at all times and work is regularly checked and clients' matters receive proper attention: see r 15.05(3). As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq.

3 See the Solicitors' Code of Conduct 2007 r 5.01(1)(b). As to the money laundering regulations see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 539 et seq.

4 See the Solicitors' Code of Conduct 2007 r 5.01(1)(c).

5 Solicitors' Code of Conduct 2007 r 5.01(1)(d). See further rr 3, 4; and PARAS 740, 818.

6 See the requirements of the Solicitors' Code of Conduct 2007 r 2.

7 See the Solicitors' Code of Conduct 2007 r 5.01(e). An in-house solicitor or in-house registered European lawyer required to be 'qualified to supervise' under r 5.01(e), (f) must ensure there is a system in place for supervising work undertaken for members of the public: r 5.03(2). See note 1.

8 Solicitors' Code of Conduct 2007 r 5.01(1)(f). See note 7. See further r 10.05; and PARA 871.

9 Solicitors' Code of Conduct 2007 r 5.01(1)(g).

10 See compliance with the Solicitors' Code of Conduct 2007 r 6 (see PARA 833).

11 See the Solicitors' Code of Conduct 2007 r 5.01(1)(h).

12 See the Solicitors' Code of Conduct 2007 r 5.01(1)(i). In relation to the provision of property selling services see also r 18.01(a).

13 Solicitors' Code of Conduct 2007 r 5.01(1)(j).

14 See the Solicitors' Code of Conduct 2007 r 5.01(1)(k). As to the meaning of 'practice' see PARA 874 note 2.

15 Solicitors' Code of Conduct 2007 r 5.01(1)(l).

UPDATE

681 Supervision and management by principal

TEXT AND NOTES--Solicitors' Code of Conduct 2007 rr 2-6, 10, 15, 18 amended on 31 March 2009, r 2 further amended on 11 August 2009, 31 March 2010.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(iii) Referral Agreements and Fee Sharing/682. Fee sharing with lawyers and colleagues.

(iii) Referral Agreements and Fee Sharing

682. Fee sharing with lawyers and colleagues.

Generally a solicitor must not share his fees with a non-lawyer unless the fee sharing is with an employee or, in the case of overseas practice, a partner, or with the following persons¹:

- 746 (1) practising members of legal professions covered by the Establishment Directive² (other than a member of the English Bar practising in England and Wales)³;
- 747 (2) practising members of other legal professions (other than a person who is struck off or suspended from the register of foreign lawyers)⁴;
- 748 (3) bodies corporate wholly owned and directed by lawyers within head (1) and (2) above for the purpose of practising law⁵;
- 749 (4) a partner⁶, retired partner or predecessor, or the dependants or personal representatives of a deceased partner or predecessor⁷;
- 750 (5) in the case of a recognised body⁸, a retired director, member or shareowner, or the dependants or personal representatives of a deceased director, member or shareowner⁹;
- 751 (6) a genuine employee¹⁰;
- 752 (7) a body corporate¹¹;
- 753 (8) the employer¹² of the solicitor¹³;
- 754 (9) a law centre or advice service operated by a charitable or similar non-commercial organisation if the solicitor is working as a volunteer and receives fees or costs from public funds or recovered from a third party¹⁴;
- 755 (10) an estate agent who is the sub-agent of the solicitor for the sale of a property¹⁵; or
- 756 (11) a charity¹⁶ under certain conditions¹⁷.

1 See the Solicitors' Code of Conduct 2007 r 8, introduction. Rule 8 also applies to an overseas practice: r 15.08.

2 I.e Directive 98/5/EC of the European Parliament and of the Council to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L77, 14.03.1998, p 36); implemented in the United Kingdom by the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119 (see PARA 541 et seq).

3 Solicitors' Code of Conduct 2007 r 8.01(a).

4 Solicitors' Code of Conduct 2007 r 8.01(b). As to the register of foreign lawyers see PARA 628.

5 Solicitors' Code of Conduct 2007 r 8.01(c).

6 I.e as permitted by the Solicitors' Code of Conduct 2007 r 12 (see PARA 676 et seq).

7 Solicitors' Code of Conduct 2007 r 8.01(d).

8 As to the meaning of 'recognised body' see PARA 687 note 3.

9 Solicitors' Code of Conduct 2007 r 8.01(e).

10 Solicitors' Code of Conduct 2007 r 8.01(f).

11 Solicitors' Code of Conduct 2007 r 8.01(g). A body corporate is one through which the solicitor practises as permitted by r 12 (see PARA 676 et seq).

12 Ie if the solicitor is employed by a firm permitted under the Solicitors' Code of Conduct 2007 r 12 (see PARA 676 et seq) or if practising in-house and acting in accordance with r 13 (see PARA 686) or 15.13.

13 Solicitors' Code of Conduct 2007 r 8.01(h).

14 Solicitors' Code of Conduct 2007 r 8.01(i).

15 Solicitors' Code of Conduct 2007 r 8.01(j).

16 As to the meaning of 'charity' see the Charities Act 1993 s 96(1); and **CHARITIES** vol 8 (2010) PARA 1 (definition applied by the Solicitors' Code of Conduct 2007 r 24.01).

17 Solicitors' Code of Conduct 2007 r 8.01(k). The conditions are that the solicitor remains in compliance with rr 1.02-1.04 (see PARA 831), supplies the Solicitors Regulation Authority with details of all agreements to share fees with a charity if requested to do so, the operation of any such agreement does not result in a partnership, any such agreement does not involve a breach of r 9 and, if the solicitor is employed in-house, he remains in compliance with r 13.04 (see PARA 686). The name of the charity must be disclosed to the client from the outset: see the Solicitors' Code of Conduct 2007 r 2.03(4).

UPDATE

682-685

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(iii) Referral Agreements and Fee Sharing/683. Fee sharing with other non-lawyers.

683. Fee sharing with other non-lawyers.

Except in certain circumstances¹ a solicitor may also share his professional fees with another person or business (the 'fee sharer') if:

- 757 (1) the purpose of the fee sharing arrangement is solely to facilitate the introduction of capital or the provision of services or both to his firm;
- 758 (2) neither the fee sharing agreement nor the extent of the fees shared permits any fee sharer to influence or constrain the solicitor's professional judgement in relation to the advice he gives to any client;
- 759 (3) the operation of the agreement does not result in a partnership as prohibited²;
- 760 (4) he supplies details of all agreements to the Solicitors Regulation Authority if requested; and
- 761 (5) the fee sharing agreement does not involve a breach of certain rules³.

¹ Ie except in relation to European cross-border practice (as defined in the Solicitors' Code of Conduct 2007 r 16.01: see PARA 827).

² Ie as prohibited by the Solicitors' Code of Conduct 2007 r 12 (see PARA 676 et seq).

³ See the Solicitors' Code of Conduct 2007 r 8.02. The rules mentioned in the text are r 9 and r 15.09. Rule 8 also applies to an overseas practice: r 15.08.

UPDATE

682-685

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(iii) Referral Agreements and Fee Sharing/684. Receiving business referrals.

684. Receiving business referrals.

Generally a solicitor receiving referrals of clients¹ must do nothing which would compromise his independence or ability to act in the best interests of the client². Before accepting instructions the solicitor must provide the client with certain information relating to the referral³. The solicitor must be satisfied that clients referred by the introducer have not been acquired as a result of marketing or publicity or other activities which, if done by a person regulated by the Solicitors Regulation Authority, would be in breach of any of the Solicitors' Code of Conduct 2007 rules⁴.

When a solicitor enters into a financial arrangement⁵ with an introducer⁶ the agreement must not include any provision which would compromise, infringe or impair any of the duties set out in the Solicitors' Code of Conduct 2007 or allow the introducer to influence or constrain the professional judgement of the solicitor in relation to the advice given to the client⁷. The agreement must provide that before making a referral the introducer must give the client all relevant information concerning the referral⁸.

If the solicitor has reason to believe that the introducer is breaching any of the terms of the agreement required by the relevant provisions of the Solicitors' Code of Conduct 2007⁹ he must take all reasonable steps to ensure that the breach is remedied and if the introducer continues to breach it the solicitor must terminate the agreement¹⁰.

A solicitor must not enter into a financial arrangement with an introducer for the referral of clients in respect of criminal proceedings or any matter in which he will act for the client with the benefit of public funding¹¹.

1 This does not apply to referrals between lawyers: see the Solicitors' Code of Conduct 2007 r 9.01(3).

2 Solicitors' Code of Conduct 2007 r 9.01(1). Potential introducers must be informed of r 9 and r 7 (see PARA 834): r 9.01(2). Rule 9 does not apply to an overseas practice: see r 15.09(1). However any referrals must still comply with r 1 (see PARA 831): see r 15.09(2).

3 See the Solicitors' Code of Conduct 2007 r 9.02(g). This duty is in addition to the requirements contained in r 2.02, 2.03 or 2.05 (see PARAS 815, 887).

4 See the Solicitors' Code of Conduct 2007 r 9.02(c). As to the provisions relating to publicity see r 7; and PARA 834.

5 For these purposes 'financial arrangement' includes any payment to a third party in respect of referrals and any agreement to be paid by a third party introducer to provide services to the third party's customers: Solicitors' Code of Conduct 2007 r 9.02(i)(i). 'Payment' includes any other consideration but does not include normal hospitality, proper disbursements or normal business expenses: r 9.02(i)(ii).

6 The introducer must undertake, as part of the agreement, to comply with the provisions of the Solicitors' Code of Conduct 2007 r 9.02: r 9.02(b).

7 Solicitors' Code of Conduct 2007 r 9.02(d). The agreement must be in writing and be available for inspection by the Solicitors Regulation Authority: r 9.02(a).

8 See the Solicitors' Code of Conduct 2007 r 9.02(e). Such information must include the fact that the introducer has a financial arrangement with the solicitor and the amount of any payment to the introducer which is calculated by reference to that referral or, where the introducer is paying the solicitor to provide services to the introducer's customers, the amount being paid to the solicitor and the amount the client is required to pay the introducer: see r 9.02(e).

9 le the Solicitors' Code of Conduct 2007 r 9.02.

10 Solicitors' Code of Conduct 2007 r 9.02(f).

11 Solicitors' Code of Conduct 2007 r 9.02(h).

UPDATE

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Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(iii) Referral Agreements and Fee Sharing/685. Making business referrals.

685. Making business referrals.

Generally a solicitor making a referral of a client¹ must do nothing which would compromise his independence or ability to act in the best interests of the client². If a solicitor recommends that a client use a particular firm, agency or business, he must do so in good faith, judging what is in the client's best interests³ and must not enter into any agreement or association which would restrict his freedom to recommend any particular firm, agency or business⁴.

Where a solicitor refers a client to a firm, agency or business that can only offer products from one source, he must notify the client in writing of this limitation⁵. If a client is likely to need an endowment policy, or similar life insurance with an investment element, the solicitor must refer the client only to an independent intermediary authorised to give investment advice⁶.

1 This does not apply to referrals between lawyers: see the Solicitors' Code of Conduct 2007 r 9.01(3).

2 Solicitors' Code of Conduct 2007 r 9.01(1). Rules 9 does not apply to an overseas practice: see r 15.09(1). However any referrals must still comply with r 1 (see PARA 831): see r 15.09(2).

3 Solicitors' Code of Conduct 2007 r 9.03(1).

4 Solicitors' Code of Conduct 2007 r 9.03(2). However this does not apply to arrangements in connection with regulated mortgage contracts, general insurance contracts or pure protection contracts: see r 9.03(3). As to the meaning of 'regulated mortgage contract' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 61(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 203 (definition applied by the Solicitors' Code of Conduct 2007 rr 9.03(4), 19(4)(f)). 'General insurance contract' is any contract of insurance within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, Sch 1 Pt 1 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 90): Solicitors' Code of Conduct 2007 rr 9.03(4), 19(4)(b). As to the meaning of 'pure protection contract' see the Solicitors' Financial Services (Scope) Rules 2001 r 8(1); PARA 858 note 3 (definition applied by the Solicitors' Code of Conduct 2007 rr 9.03(4), 19(4)(d)).

5 Solicitors' Code of Conduct 2007 r 9.03(5).

6 Solicitors' Code of Conduct 2007 r 9.03(6).

UPDATE

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Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(iv) In-house Practice/686. In-house practice.

(iv) In-house Practice

686. In-house practice.

Unless certain conditions would be compromised¹, a solicitor² practising from an office in England and Wales as the employee of a business which is not the practice³ of a solicitor may:

- 762 (1) act for fellow employees under certain circumstances⁴;
- 763 (2) act for a related body⁵;
- 764 (3) act on a pro bono basis⁶;
- 765 (4) act for a member of an association where the solicitor works for that association⁷;
- 766 (5) if employed by an insurer subrogated to the rights of an insured in respect of any matter, act on behalf of the insurer in relation to that matter in the name of the insured⁸;
- 767 (6) if working for a commercial organisation providing a telephone legal advice service, advise inquirers⁹;
- 768 (7) if employed in local government, act¹⁰ for another organisation or person to whom the employer is statutorily empowered to provide legal services, for a member or former member of the local authority, for a company limited by shares or guarantee, for lenders in connection with new mortgages arising from the redemption of mortgages, for a charity or voluntary organisation whose objects relate wholly or partly to the employer's area, or for a patient who is the subject of a Court of Protection Order where acting for a fellow employee who is appointed as receiver for the patient, for a child or young person subject to a care order in favour of the employer on an application to the Criminal Injuries Compensation Authority¹¹;
- 769 (8) if employed by a law centre or advice service operated by a charitable or similar non-commercial organisation, provide advice to and otherwise act for members of the public¹²;
- 770 (9) if employed by the Crown, a non-departmental public body or the Legal Services Commission, give legal advice to and act for other persons¹³;
- 771 (10) if employed by a regulatory body, give legal advice to other persons and, in the case of statutory functions, act generally for such persons¹⁴;
- 772 (11) if employed by a practising lawyer of another jurisdiction, provide legal services to the solicitor's employer's clients¹⁵.

¹ A solicitor or registered European lawyer must not act for a client other than his employer under the Solicitors' Code of Conduct 2007 rr 13.02-13.12 if it would compromise:

- 65 (1) his professional independence or integrity (r 13.01(1)(a));
- 66 (2) his duty to act in the best interest of that client (r 13.01(1)(b));
- 67 (3) his duty to comply with r 3 (see PARA 818) (r 13.01(1)(c));
- 68 (4) his duty to keep information about that client's affairs confidential (r 13.01(1)(d));
- 69 (5) his ability to discharge any other duty owed to that client under r 13 (r 13.01(1)(e)).

As to the Solicitors' Code of Conduct 2007 see PARA 830 et seq.

2 This also applies to a registered European Lawyer. As to the meaning of 'registered European lawyer' see PARA 542 note 2.

3 As to the meaning of 'practice' see PARA 874 note 2.

4 See the Solicitors' Code of Conduct 2007 r 13.02(1)-(3). This includes acting for former employees as well as a director, company secretary, board member or a member of the solicitor's employee: see r 13.02(1).

5 See the Solicitors' Code of Conduct 2007 r 13.03. This includes a trade association of which the employer is a member; a club, association, pension fund or other scheme operated for the benefit of employees to the employer: see r 13.03(1)(c), (d). It also includes, unless the solicitor is employed in local government, the employer's holding, associated or subsidiary company; a partnership, syndicate, limited liability partnership incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq) or company by way of joint venture: see r 13.03(1)(a), (b), (2).

6 See the Solicitors' Code of Conduct 2007 r 13.04. The work must be covered by an indemnity and either no fees are charged or a conditional fee agreement is used and the only fees charged are costs which are paid to a charity under a fee sharing agreement: r 13.04(1)(b). This does not permit pro bono work to be carried out in conjunction with services provided under r 13.05 (see text and note 7), 13.06 (see text and note 8), 13.07 (see text and note 9) or 13.11 (see text and note 15): see r 13.04(2). Subject to certain conditions r 13.04 applies to an overseas practice: see r 15.13(1). As to the meaning of 'overseas practice' see PARA 874 note 2. As to pro bono representation see also PARA 934.

7 See the Solicitors' Code of Conduct 2007 r 13.05. As to the type of association to which this applies see r 13.05(a)-(c).

8 See the Solicitors' Code of Conduct 2007 r 13.06.

9 See the Solicitors' Code of Conduct 2007 r 13.07. The advice must comprise telephone advice only with a follow up letter when necessary, and suitable indemnity cover must be in place: see r 13.07(a), (b).

10 This is subject to certain conditions: see the Solicitors' Code of Conduct 2007 r 13.08.

11 See the Solicitors' Code of Conduct 2007 r 13.08.

12 See the Solicitors' Code of Conduct 2007 r 13.09. This does not apply to an association formed for the benefit of its members: r 13.09(2).

13 See the Solicitors' Code of Conduct 2007 r 13.10. However this does not apply if in so acting the solicitor would be carrying out the lawful functions of the employer: r 13.10.

14 See the Solicitors' Code of Conduct 2007 r 13.12.

15 See the Solicitors' Code of Conduct 2007 r 13.11.

UPDATE

686 In-house practice

TEXT AND NOTES--Solicitors' Code of Conduct 2007 rr 8, 12, 13, 15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/687. Disapplication of certain prohibitions and penal provisions.

(v) Recognised bodies

A. RECOGNITION ETC

687. Disapplication of certain prohibitions and penal provisions.

The statutory prohibitions¹ on an unqualified person acting as a solicitor do not apply² to a recognised body³. Nor, until a day to be appointed, do they apply to any act done by an officer or employee of a recognised body if:

- 773 (1) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of that body; and
- 774 (2) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence⁴ in relation thereto⁵.

1 Ie the Solicitors Act 1974 s 20 (prospectively substituted) (see PARA 589), s 22(1) (prospectively repealed) (see PARA 595) and s 23(1) (prospectively repealed) (see PARA 592): see s 9(3). As from a day to be appointed s 9(3) is substituted by the Legal Services Act 2007 Sch 16 paras 80, 81(1), (6) and no longer applies to ss 22(1), 23(1). At the date at which this volume states the law no such day had been appointed.

2 Ie notwithstanding anything in the Solicitors Act 1974 s 24(2) (application of penal provisions to bodies corporate): see PARA 589 note 2.

3 Administration of Justice Act 1985 s 9(3) (prospectively substituted: see note 1). Nothing in the Solicitors Act 1974 s 24(1) (see PARA 593) applies in relation to a recognised body: Administration of Justice Act 1985 s 9(3). For the purposes of s 9 and Sch 2 'recognised body' means a body corporate for the time being recognised under s 9: s 9(8), Sch 2 para 1(1). However as from a day to be appointed the word 'corporate' is repealed by the Legal Services Act 2007 Sch 16 para 81(10)(e), Sch 23. As to rules prescribing the circumstances under which a body may be recognised see the Administration of Justice Act 1985 s 9(1)(b); the Solicitors' Recognised Bodies Regulations 2007; and PARAS 688, 691. For the purposes of the Solicitors' Code of Conduct 2007 'recognised body' means a body corporate (which can be a company or a limited liability partnership) for the time being recognised under the Administration of Justice Act 1985 and the Solicitors' Recognised Bodies Regulations 2007: Solicitors' Code of Conduct 2007 r 24.01. For the purposes of the Solicitors' Accounts Rules 1998 'recognised body' means a company or limited liability partnership recognised under the Administration of Justice Act 1985 s 9 (see PARAS 688, 691): Solicitors' Accounts Rules 1998 r 2(2)(t). For the purposes of the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, the Solicitors' Financial Services (Scope) Rules 2001 and the Solicitors' Indemnity Insurance Rules 2008 'recognised body' means a body corporate recognised under the Administration of Justice Act 1985 s 9: see the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 2; the Solicitors' Financial Services (Scope) Rules 2001 r 8 and the Solicitors' Indemnity Insurance Rules 2008 r 3.1.

4 Ie an offence under the Solicitors Act 1974 s 23 (prospectively repealed): see PARA 592.

5 Administration of Justice Act 1985 s 9(4) (prospectively repealed by the Legal Services Act 2007 Sch 16 paras 80, 81(1), (7), Sch 23).

UPDATE

687 Disapplication of certain prohibitions and penal provisions

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

NOTE 3--Repeal of word 'corporate' in force 31 March 2009: SI 2009/503. SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931. Definition of 'recognised body' in Solicitors' Code of Conduct 2007 r 24.01 amended on 31 March 2009.

TEXT AND NOTES 4, 5--Repeal of Administration of Justice Act 1985 s 9(4) in force 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/688. Power to make rules relating to incorporated practices.

688. Power to make rules relating to incorporated practices.

Until a day to be appointed the following provisions have effect¹. The Solicitors Regulation Authority² may make rules:

- 775 (1) making provision as to the management and control by solicitors, or registered European lawyers³, or by such other lawyers as permitted by rules⁴ of bodies corporate carrying on businesses consisting of the provision of professional services such as are provided by individuals practising as solicitors⁵;
- 776 (2) prescribing the circumstances in which such bodies may be recognised by the Authority as being suitable bodies to undertake the provision of any such services⁶;
- 777 (3) prescribing the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies corporate so recognised if they are to remain so recognised⁷; and
- 778 (4) regulating the conduct of the affairs of such bodies⁸.

Rules may also make provision⁹:

- 779 (a) for the manner and form in which applications for recognition¹⁰ are to be made, and for the payment of fees in connection with such applications¹¹;
- 780 (b) for regulating the names that may be used by recognised bodies¹²;
- 781 (c) as to the period for which any recognition granted is to remain in force¹³;
- 782 (d) for the revocation of any such recognition on the grounds that it was granted as a result of error or fraud¹⁴;
- 783 (e) for the keeping by the Authority of a list containing the names and places of business of all bodies corporate which are for the time being recognised under these provisions, and for the information contained in any such list to be available for inspection¹⁵;
- 784 (f) for rules made under any provision of the Solicitors Act 1974 to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Authority to be necessary or expedient¹⁶;
- 785 (g) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies¹⁷.

The Lord Chancellor may by order made by statutory instrument provide for any enactment or instrument passed or made before 1 January 1992¹⁸ and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to him to be necessary or expedient¹⁹.

1 The Administration of Justice Act 1985 s 9 is amended by the Legal Services Act 2007 Sch 19 paras 80, 81, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed. For the Solicitors Act 1974 s 9 as amended by the Legal Services Act 2007 see PARA 691 et seq.

2 The Administration of Justice Act 1985 s 9 (as prospectively amended) refers to the 'Society' or the 'Council' (ie the Law Society and the Council of the Law Society elected in accordance with provisions of the

Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4) (definitions applied by the Administration of Justice Act 1985 s 9(8)) and s 9(1), (2)(f), (8) is prospectively amended to refer to the 'Society': see s 9 (prospectively amended: see note 1). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

4 Ie rules made under the Administration of Justice Act 1985 s 9.

5 Administration of Justice Act 1985 s 9(1)(a) (amended by the Courts and Legal Services Act 1990 Sch 18 para 54).

6 Administration of Justice Act 1985 s 9(1)(b).

7 Administration of Justice Act 1985 s 9(1)(c).

8 Administration of Justice Act 1985 s 9(1)(d). Any rules so made must be made with the concurrence of the Master of the Rolls: s 9(9).

9 The Solicitors' Recognised Bodies Regulations 2007 were made with the concurrence of the Master of the Rolls under the Administration of Justice Act 1985 s 9(2). They were made on 10 March 2007 and commenced on 1 July 2007. However the Authority has the power to waive in writing provisions of the regulations: see the Solicitors' Recognised Bodies Regulations 2007 reg 10.

10 Ie under the Administration of Justice Act 1985 s 9.

11 Administration of Justice Act 1985 s 9(2)(a). Applications for initial recognition and for renewal of recognition must be made on the prescribed form and accompanied by the prescribed fee and such information and documentation as the Authority may require: Solicitors' Recognised Bodies Regulations 2007 reg 1.1. A recognised body must either send its application for renewal to be received by the Authority on or before the renewal date or notify the Authority before that date that it does not wish to renew: see regs 1.2, 1.3.

12 Administration of Justice Act 1985 s 9(2)(b); and see PARAS 688, 691. As to the meaning of 'recognised body' see PARA 687 note 3. A certificate signed by an officer of the Authority and stating that any body corporate is or is not, or was or was not at any time, a recognised body is evidence of the facts stated in the certificate, unless the contrary is proved; and a certificate purporting to be so signed is taken to have been so signed unless the contrary is proved: s 9(5). Any reference to a solicitor in the Law of Property Act 1925 ss 10(2), 48, 182, the Land Charges Act 1972 s 12 and the Local Land Charges Act 1975 s 13 is to be construed as including a reference to a recognised body and any reference to a person's solicitor is to be construed as including a reference to a recognised body acting for that person: Administration of Justice Act 1985 Sch 2 para 37 (amended by SI 1997/1892 and the Land Registration Act 2002 Sch 13).

13 Administration of Justice Act 1985 s 9(2)(c).

14 Administration of Justice Act 1985 s 9(2)(d).

15 Administration of Justice Act 1985 s 9(2)(e).

16 Administration of Justice Act 1985 s 9(2)(f).

17 Administration of Justice Act 1985 s 9(2)(h).

18 Ie the date when the Administration of Justice Act 1985 s 9 came into force: see s 69(2); and the Administration of Justice Act 1985 (Commencement No 7) Order 1991, SI 1991/2683.

19 Administration of Justice Act 1985 s 9(7) (amended by the Legal Services Act 2007 Sch 81(7)).

UPDATE

688 Power to make rules relating to incorporated practices

TEXT AND NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

NOTE 1--Reference to Legal Services Act 2007 Sch 19 paras 80, 81 should be to Sch 16 paras 80, 81.

NOTES 9, 11--Solicitors' Recognised Bodies Regulations 2007 now the SRA Recognised Bodies Regulations 2009 (substituted on 31 March 2009, amended on 1 July 2009).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/689. Conduct of an incorporated practice.

689. Conduct of an incorporated practice.

A recognised body¹ must comply with the following provisions² and ensure that its directors³, members and shareowners⁴ comply with the provisions relating to them⁵. The business of a recognised body may consist only of professional services of the sort provided by individuals practising as solicitors and/or lawyers of other jurisdictions⁶. It must not undertake any work which includes a conveyancing or probate service reserved to qualified persons by the Solicitors Act 1974 unless at least one member or director is suitably qualified⁷.

A recognised body which is a limited liability partnership⁸ must have at least two members⁹. A member must not create any charge or other third party interest over the member's interest in the partnership¹⁰.

A recognised body must have at least one practising address and, in certain circumstances, its registered office, in England and Wales¹¹.

A recognised body must supply any information and documentation relating to the ownership, structure, directors, members or shareowners of the recognised body as and when requested to do so by the Solicitors Regulation Authority¹².

1 As to the meaning of 'recognised body' see PARA 687 note 3.

2 I.e. the Solicitors' Code of Conduct 2007 r 14. Rule 14 applies to a recognised body in relation to the recognised body's overseas practice: see r 15.14. As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq. As to the meaning of 'overseas practice' see PARA 874 note 2.

3 As to the meanings of 'director' see PARA 676 note 4. A director of a recognised body which is a company must so far as possible ensure that the body complies with the Solicitors' Code of Conduct r 14: r 14.01(2). A director, member or shareowner of a recognised body and a person employed to work in the practice of a recognised body must not cause, instigate or connive at any breach of r 14: r 14.01(4). A recognised body which is a company must ensure that the directors are solicitors with practising certificates, registered European lawyers, registered foreign lawyers and/or non-registered European lawyers: see r 14.03(1)(a). As to the meaning of 'practice' see PARA 874 note 2.

4 As to the meaning of 'member' see PARA 676 note 5. A member of a recognised body which is a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq) must take all reasonable steps to ensure that the body complies with the Solicitors' Code of Conduct 2007 r 14: r 14.01(3). See note 3. As to the meaning of 'shareowner' see PARA 676 note 6. A record must be kept by the recognised body of all non-member shareowners: see r 14.04(5). A recognised body which is a company must ensure that all members and shareowners are solicitors with practising certificates, registered European lawyers, registered foreign lawyers, non-registered European lawyers, recognised bodies and/or European corporate practices: r 14.04(1). There is a prohibition on a member or shareowner creating third party interests over his interest in the company: see r 14.04(4). Provisions are made in the Solicitors' Code of Conduct 2007 for when a member or shareowner ceases to become eligible to be a member or shareowner, dies, or becomes insolvent: r 14.04(6)-(8). Provision is also made for mental health receivers and proxies and corporate representatives: r 14.04(9), (10).

5 See the Solicitors' Code of Conduct 2007 r 14.01(1).

6 Solicitors' Code of Conduct 2007 r 14.02(1).

7 Solicitors' Code of Conduct 2007 r 14.02(2). As to the required qualifications see r 14.02(2)(a), (b).

8 I.e. a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq): Solicitors' Code of Conduct 2007 r 24.01.

9 Solicitors' Code of Conduct 2007 r 14.05(2)(a). If one member dies a suitable replacement must be made within six months: r 14.05(2)(b). Only certain persons may be members of a limited liability partnership and provision is made for their replacement in certain circumstances: see the Solicitors' Code of Conduct 2007 r 14.05(1), (3), (4).

10 See the Solicitors' Code of Conduct 2007 r 14.05(5).

11 See the Solicitors' Code of Conduct 2007 r 14.06.

12 Solicitors' Code of Conduct 2007 r 14.07(1). Certain information such as any change of name, registered office address, practising address or director, member or shareowner must be notified to the Authority: see r 14.07(2)-(5).

UPDATE

689 Conduct of an incorporated practice

NOTES--Solicitors' Code of Conduct 2007 r 14 amended on 31 March 2009.

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690. Definition of 'legal services body'.

As from a day to be appointed the following provisions have effect¹. 'Legal services body' means a body (corporate or unincorporate) in respect of which the management and control conditions and the relevant lawyer condition are satisfied².

The management and control conditions are satisfied if:

- 786 (1) at least 75 per cent³ of the body's managers are legally qualified⁴;
- 787 (2) the proportion of shares in the body held by persons who are legally qualified is at least 75 per cent⁵;
- 788 (3) the proportion of voting rights in the body which persons who are legally qualified are entitled to exercise, or control the exercise of, is at least 75 per cent⁶;
- 789 (4) all the persons with an interest in the body who are not legally qualified are managers of the body⁷; and
- 790 (5) all the managers of the body who are not legally qualified are individuals approved by the Solicitors Regulation Authority⁸ as suitable to be managers of a recognised body⁹.

The relevant lawyer condition is satisfied in relation to a body if at least one manager of the body is a solicitor, a registered European lawyer¹⁰ or a qualifying body¹¹.

1 The Administration of Justice Act 1985 s 9A is added by the Legal Services Act 2007 Sch 16 paras 80, 82 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Administration of Justice Act 1985 s 9A(1) (prospectively added: see note 1).

3 The Solicitors Regulation Authority may by rules under the Administration of Justice Act 1985 s 9 (see PARA 691) provide that, in relation to specified kinds of bodies, s 9A(2) applies as if the references to 75% were to such greater percentage as may be specified (and different percentages may be specified for different kinds of bodies): s 9A(3) (prospectively added: see note 1). 'Specified' means specified in rules made by the Authority: s 9A(8) (so prospectively added). Section 9A refers to the 'Society' (ie the Law Society), however, in practice the body currently responsible for the regulation of solicitors and the making of rules is the Solicitors Regulation Authority (see PARA 619). Until a day to be appointed (ie the coming into force of s 13 (see PARA 509)) rules made under s 9A may only be made with the concurrence of the Lord Chancellor (as well as the Master of the Rolls): see the Legal Services Act 2007 Sch 22 para 16.

4 Administration of Justice Act 1985 s 9A(2)(a) (prospectively added: see note 1). As to the meaning of 'manager' see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Administration of Justice Act 1985 ss 9(8), 9A(8)).

5 Administration of Justice Act 1985 s 9A(2)(b) (prospectively added: see note 1). As to the meaning of 'shares' see the Legal Services Act 2007 ss 72, 109; and PARA 1477 note 3 (definition applied by the Administration of Justice Act 1985 s 9A(8) (so prospectively added)).

6 Administration of Justice Act 1985 s 9A(2)(c) (prospectively added: see note 1).

7 Administration of Justice Act 1985 s 9A(2)(d) (prospectively added: see note 1). A person has an interest in a body if the person has an interest in the body for the purposes of s 9: s 9A(9) (so prospectively added).

8 See note 3.

9 Administration of Justice Act 1985 s 9A(2)(e) (prospectively added: see note 1). As to the meaning of 'recognised body' see PARA 687 note 3 (definition applied by s 9A(8) (so prospectively added)).

10 As to the meaning of 'registered European lawyer' see the Administration of Justice Act 1985 s 9; and PARA 542 note 2 (definition applied by s 9A(8) (prospectively added: see note 1)).

11 Administration of Justice Act 1985 s 9A(4) (prospectively added: see note 1). For this purpose a qualifying body is a body in respect of which:

- 70 (1) the management and control condition would be satisfied if the references in s 9A(2) to persons who are legally qualified were to persons who are:
 11. (a) an authorised person who is an individual (s 9A(5), (6)(a) (so prospectively added));
11
 12. (b) a registered foreign lawyer (s 9A(5), (6)(b) (so prospectively added));
12
 13. (c) a person entitled to pursue professional activities under a professional title to which EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) (see PARA 534) applies in a state to which it applies (other than the title of barrister or solicitor in England and Wales) (Administration of Justice Act 1985 s 9A(5), (6)(c) (so prospectively added));
13
 14. (d) an authorised person which is a body in respect of which the services condition is satisfied and the management and control condition would be satisfied if the references in s 9A(2) to persons who are legally qualified were to persons who are legally qualified by virtue of heads (a)-(c) above (s 9A(5), (6)(d) (so prospectively added));
14
 15. (e) a body which provides professional services such as are provided by individuals who are authorised persons or lawyers of other jurisdictions and in respect of which the management and control condition would be satisfied if the references in s 9A(2) to persons who are legally qualified were to persons who are legally qualified by virtue of heads (a)-(c) above (s 9A(5), (6)(e) (so prospectively added));
15
- 71 (2) the relevant lawyer condition is satisfied in that at least one manager of the body is a solicitor or a registered European lawyer (s 9A(4)(a), (b), (5)(b) (so prospectively added)); and
- 72 (3) the services condition is satisfied (s 9A(5)(c) (so prospectively added)).

The services condition is satisfied in relation to a body if the body provides only services which may be provided by a recognised body (having regard to the rules under s 9(1A), (1C)): s 9A(7) (so prospectively added). As to the meaning of 'registered foreign lawyer' see the Courts and Legal Services Act 1990 s 89; and PARA 628 (definition applied by the Administration of Justice Act 1985 s 9A(6)(b) (so prospectively added)). As to the meaning of 'authorised person' see s 9; and PARA 515 note 3.

UPDATE

690-691 Definition of 'legal services body', Power to make rules relating to legal services bodies

These provisions have effect as from 31 March 2009: SI 2009/503.

690 Definition of 'legal services body'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 11--Administration of Justice Act 1985 s 9A(5) amended, s 9A(6)(f)-(h), (6A)-(6C) added, by virtue of SI 2008/3074, so as to bring legal partnerships, bodies corporate

and other authorised bodies (defined in s 9A(8) (amended by SI 2008/3074)) within definition of a qualifying body subject to specified restrictions.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/691. Power to make rules relating to legal services bodies.

691. Power to make rules relating to legal services bodies.

As from a day to be appointed¹ the Solicitors Regulation Authority may make rules² making provision as to the management and control of legal services bodies³, prescribing the circumstances in which such bodies may be recognised by the Authority as being suitable bodies to undertake the provision of any solicitor services or other relevant legal services⁴, prescribing the requirements which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies so recognised if they are to remain so recognised⁵ and regulating the conduct of the affairs of such bodies⁶. The Authority may by such rules provide:

- 791 (1) that services specified, or of a description specified, in the rules are not to be treated as solicitor services or other relevant legal services⁷;
- 792 (2) for the manner and form in which applications for recognition⁸ or for the renewal of such recognition, are to be made, and requiring such applications to be accompanied by a fee of such amount as the Authority may from time to time determine⁹;
- 793 (3) for the manner and form in which other applications under the rules are to be made, and requiring such applications to be accompanied by a fee of such amount as the Authority may from time to time determine¹⁰;
- 794 (4) for regulating the names that may be used by recognised bodies¹¹;
- 795 (5) about the time when any recognition, or renewal of recognition, takes effect and the period for which it is¹² to remain in force¹³;
- 796 (6) for the suspension or revocation of any such recognition, on such grounds and in such circumstances as may be prescribed by the rules¹⁴;
- 797 (7) about the effect on the recognition of a partnership or other unincorporated body (the 'existing body') of any change in the membership of the existing body, including provision for the existing body's recognition to be transferred where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business¹⁵;
- 798 (8) for the keeping by the Authority of a register containing the names and places of business of all bodies which are for the time being recognised under these provisions¹⁶, and such other information relating to those bodies as may be specified in the rules¹⁷;
- 799 (9) for information (or information of a specified description) on such a register to be made available to the public, including provision about the manner in which, and times at which, information is to be made so available¹⁸;
- 800 (10) for rules made under any provision of the Solicitors Act 1974 to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Authority to be necessary or expedient¹⁹;
- 801 (11) about the education and training requirements to be met by managers and employees of recognised bodies²⁰;
- 802 (12) for rules made under any provision of the Solicitors Act 1974 to have effect in relation to managers and employees of recognised bodies with such additions, omissions or other modifications as appear to the Authority to be necessary or expedient²¹;

- 803 (13) for recognised bodies to appoint a person or persons to monitor compliance, by the recognised body, its managers and its employees, with requirements imposed²² on them²³;
- 804 (14) for the manner of service on recognised bodies of documents authorised or required to be served on such bodies²⁴;
- 805 (15) for appeals to the High Court against decisions made by the Authority under the rules: (a) to suspend or revoke the recognition of any body; (b) not to approve, as suitable to be the manager of recognised body, an individual who is not legally qualified (or to withdraw such approval)²⁵.

If rules provide for the recognition of legal services bodies which have one or more managers who are not legally qualified, the rules must make provision:

- 806 (i) for the recognition of such bodies to be suspended or revoked, on such grounds and in such circumstances as may be prescribed by the rules²⁶;
- 807 (ii) as to the criteria and procedure for the Authority's approving, as suitable to be a manager of a recognised body, an individual who is not legally qualified (and for the Authority's withdrawing such approval)²⁷.

1 The Administration of Justice Act 1985 s 9 is amended by the Legal Services Act 2007 Sch 19 paras 80, 81, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed. As to the Solicitors Act 1974 s 9 prior to amendment by the Legal Services Act 2007 see PARA 688.

2 The Administration of Justice Act 1985 s 9 (as prospectively amended) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4) (definition applied by the Administration of Justice Act 1985 s 9(8))). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619). Rules made under s 9 may contain such incidental, supplemental, transitional or transitory provisions or savings as the Authority considers necessary or expedient: s 9(2K) (as prospectively added: see note 1). The Solicitors Act 1974 s 86A (prospectively added) (see PARA 828) applies to rules under the Administration of Justice Act 1985 s 9 as it applies to rules under the Solicitors Act 1974: Administration of Justice Act 1985 s 9(2J) (so prospectively added). Until a day to be appointed (ie the coming into force of the Legal Services Act 2007 s 13 (see PARA 509)) rules made under s 9(1A), (1C), (2F), (2G), (2I) may only be made with the concurrence of the Lord Chancellor (as well as the Master of the Rolls): see the Legal Services Act 2007 Sch 22 para 16.

3 Administration of Justice Act 1985 s 9(1)(a) (as prospectively amended: see note 1). As to the meaning of 'legal services body' see s 9A; and PARA 690 (definition applied by s 9(8) (application of definition as so prospectively added)).

4 Administration of Justice Act 1985 s 9(1)(b) (as prospectively amended: see note 1). 'Relevant legal services' means solicitor services and, where authorised persons other than solicitors or registered European lawyers are managers or employees of, or have an interest in, a recognised body, services of the kind provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities): Administration of Justice Act 1985 s 9(1B) (as so prospectively added). As to conditions applied on the granting of recognition see PARA 693. As to the meaning of 'authorised person' see PARA 515 note 3. As to the meaning of 'reserved legal activities' see the Legal Services Act 2007; and PARA 512 (definition applied by virtue of the Administration of Justice Act 1985 s 9(1B)(b), (8) (as so prospectively added and amended)). As to the meaning of 'registered European lawyer' see PARA 542 note 2.

5 Administration of Justice Act 1985 s 9(1)(c) (as prospectively amended: see note 1). Where the Authority makes rules under s 9(1) it must by rules under s 9(1)(c) prescribe the requirement that (subject to any exceptions provided by the rules) recognised bodies must not provide services other than solicitor services or solicitor services and other relevant legal services: s 9(1A) (as so prospectively added).

6 Administration of Justice Act 1985 s 9(1)(d) (as prospectively amended: see note 1).

7 Administration of Justice Act 1985 s 9(1C) (as prospectively added: see note 1). For these purposes 'solicitor services' means professional services such as are provided by individuals practising as solicitors or lawyers of other jurisdictions: s 9(8) (definition as so prospectively added).

8 le an application for recognition under the Administration of Justice Act 1985 s 9. See text and note 5.

9 Administration of Justice Act 1985 s 9(2)(a) (as prospectively amended: see note 1).

10 Administration of Justice Act 1085 s 9(2)(aa) (as prospectively added: see note 1).

11 Administration of Justice Act 1985 s 9(2)(b); and see PARA 688. As to the meaning of 'recognised body' see PARA 687 note 3. A certificate signed by an officer of the Authority and stating that any body is or is not, or was or was not at any time, a recognised body is evidence of the facts stated in the certificate, unless the contrary is proved; and a certificate purporting to be so signed is taken to have been so signed unless the contrary is proved: s 9(5) (as so prospectively amended). Subject to the provisions of Sch 2, the Lord Chancellor may by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament provide for any enactment or instrument passed or made before or in the same session as the Legal Services Act 2007 was passed and having effect in relation to solicitors to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Lord Chancellor to be necessary or expedient: see the Administration of Justice Act 1985 s 9(7) (amended by the Legal Services Act 2007 Sch 16 para 81(9)). Until a day to be appointed (ie the coming into force of s 13 (see PARA 509)) a reference in ss 9, 9A, 32A, Schs 2, 6 (as amended and substituted) to an authorised person is to be read as a reference to:

73 (1) a person who has in force a certificate issued by the Bar Standards Board authorising the person to practise as a barrister (Sch 22 para 15(1)(a));

74 (2) a person who is qualified under the Solicitors Act 1974 s 1 (see PARA 635) to act as a solicitor (Legal Services Act 2007 Sch 22 para 15(1)(b));

75 (3) a recognised body under the Administration of Justice Act 1985 s 9 (Legal Services Act 2007 Sch 22 para 15(1)(c));

76 (4) a registered European lawyer (Sch 22 para 15(1)(d));

77 (5) a person who has in force a certificate issued by the Institute of Legal Executives authorising the person to practise as a legal executive (Sch 22 para 15(1)(e));

78 (6) licensed conveyancers (Sch 22 para 15(1)(f));

79 (7) a recognised body under the Administration of Justice Act 1985 s 32 (Legal Services Act 2007 Sch 22 para 15(1)(g));

80 (8) a duly certificated notary (Sch 22 para 15(1)(h));

81 (9) a person who (having regard to s 15) carries on notarial activities through an employee or manager of the person who is within head (8) (Sch 22 para 15(1)(i));

82 (10) a registered patent attorney (Sch 22 para 15(1)(j));

83 (11) a patent attorney body (Sch 22 para 15(1)(k));

84 (12) a registered trade mark attorney (Sch 22 para 15(1)(l));

85 (13) a trade mark attorney body (Sch 22 para 15(1)(m));

86 (14) an authorised member of the Association of Law Costs Draftsmen (Sch 22 para 15(1)(n));
or

87 (15) a person who (having regard to s 15) carries on an activity which is a reserved legal activity within Sch 5 para 18(2) through an employee or manager of the person who is within head (14) (Sch 22 para 15(1)(o)).

The wording in the Legal Services Act 2007 Sch 22 para 15(1)(a) in head (1) refers to the General Council of the Bar. However in practice the body responsible for the regulations of barristers is the Bar Standards Board: see PARA 1649. As to barristers' practising certificates see PARA 1155. As to the meaning of 'registered European lawyer' see PARA 542 note 2. As to the meaning of 'licensed conveyancers' see the Administration of Justice Act 1985 s 11(2); and PARA 1319. As to the meaning of 'duly certificated notary' see the Legal Services Act 2007 Sch 5 para 12(4); and PARA 1412. As to the meaning of 'registered patent attorney' see the Copyright, Designs and Patents Act 1988 s 275(1); and **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 615. As to the meaning of

'patent attorney body' see the Legal Services Act 2007 Sch 5 para 14(7); and PARA 578. As to the meaning of 'registered trade mark attorney' see the Trade Marks Act 1994; and **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 462. As to the meaning of 'trade mark attorney body' see the Legal Services Act 2007 Sch 5 para 16(7); and PARA 579. As to the meaning of 'authorised member of the Association of Law Costs Draftsmen' see Sch 5 para 17(2); and PARA 581.

12 This is subject to the Administration of Justice Act 1985 Pt 1 (ie ss 8-10).

13 Administration of Justice Act 1985 s 9(2)(c) (as prospectively substituted: see note 1).

14 Administration of Justice Act 1985 s 9(2)(d) (as prospectively substituted: see note 1).

15 Administration of Justice Act 1985 s 9(2)(e) (as prospectively substituted: see note 1).

16 ie under the Administration of Justice Act 1985 s 9(2)(ea) (prospectively added) (see text and note 17).

17 Administration of Justice Act 1985 s 9(2)(ea) (as prospectively added: see note 1).

18 Administration of Justice Act 1985 s 9(2)(eb) (as prospectively added: see note 1).

19 Administration of Justice Act 1985 s 9(2)(f) (as prospectively amended: see note 2).

20 Administration of Justice Act 1985 s 9(2)(fa) (as prospectively added: see note 1).

21 Administration of Justice Act 1985 s 9(2)(fb) (as prospectively added: see note 1).

22 ie imposed on them by virtue of the Administration of Justice Act 1985 or any rules applicable to them by virtue of s 9. Conditions may be imposed: see PARA 693.

23 Administration of Justice Act 1985 s 9(2)(fc) (as prospectively added: see note 1).

24 Administration of Justice Act 1985 s 9(2)(h).

25 See the Administration of Justice Act 1985 s 9(2B); and PARA 700. As to the meaning of 'manager' in relation to a body see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Administration of Justice Act 1985 s 9(8) (application of definition as prospectively added: see note 1)). As to the meaning of 'legally qualified' see s 9A; and PARA 690 note 11 (definition applied by s 9(8) (application of definition as so prospectively added)).

26 Administration of Justice Act 1985 s 9(2A)(a) (as prospectively added: see note 1). As to rules providing for appeals against such decisions see PARA 700.

27 Administration of Justice Act 1985 s 9(2A)(b) (as prospectively added: see note 1). As to rules providing for appeals against such decisions see PARA 700.

UPDATE

690-691 Definition of 'legal services body', Power to make rules relating to legal services bodies

These provisions have effect as from 31 March 2009: SI 2009/503.

691 Power to make rules relating to legal services bodies

NOTE 1--Reference to Legal Services Act 2007 Sch 19 paras 80, 81 should be to Sch 16 paras 80, 81.

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692. Granting recognition as a recognised body.

The Solicitors Regulation Authority may grant an application for initial recognition or renewal of recognition if satisfied that the applicant body corporate:

- 808 (1) is appropriately registered¹ in England and Wales or in Scotland or registered outside England, Wales and Scotland as a *societas Europaea*²;
- 809 (2) complies with the relevant rules³ of the Solicitors' Code of Conduct 2007 in relation to its internal structure, direction and ownership⁴;
- 810 (3) has a name that complies with the relevant rules⁵ of the Solicitors' Code of Conduct 2007⁶; and
- 811 (4) complies with or is exempt from the Solicitors' Indemnity Insurance Rules⁷ as to qualifying insurance and top-up insurance⁸.

The Authority must keep a list of recognised bodies⁹ and issue them with a certificate of recognition¹⁰. Recognition last for three years and continues until revoked¹¹.

1 He is registered under the Companies Act 1985 (see **COMPANIES** vol 14 (2009) PARA 24 et seq) or the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq).

2 Solicitors' Recognised Bodies Regulations 2007 reg 2.1(a). '*Societas Europaea*' means a European public limited liability company within the meaning of EC Council Regulation 2157/01 (OJ L294 10.11.2001 p 1) on the Statute for a European company: Solicitors' Code of Conduct 2007 r 24.01 (definition applied by the Solicitors' Recognised Bodies Regulations 2007 reg 9).

3 He the Solicitors' Code of Conduct 2007 r 14 (see PARA 689).

4 Solicitors' Recognised Bodies Regulations 2007 reg 2.1(b).

5 He the Solicitors' Code of Conduct 2007 r 7 (see PARA 834).

6 Solicitors' Recognised Bodies Regulations 2007 reg 2.1(c).

7 See PARA 853 et seq.

8 Solicitors' Recognised Bodies Regulations 2007 reg 2.1(d).

9 See the Solicitors' Recognised Bodies Regulations 2007 reg 5.1. The list must be in an electronic form and a copy made available for inspection by any member of the public: regs 5.2, 5.3. As to the meaning of 'recognised body' see the Solicitors' Code of Conduct 2007 r 24; and PARA 687 note 3 (definition applied by the Solicitors' Recognised Bodies Regulations 2007 reg 9).

10 See the Solicitors' Recognised Bodies Regulations 2007 reg 6.1. Certain information such as the name of the recognised body must be stated on the certificate: see reg 6.2.

11 See the Solicitors' Recognised Bodies Regulations 2007 reg 4.1. Renewal commences the day following the renewal date: see regs 4.2, 4.3.

UPDATE

692 Granting recognition as a recognised body

NOTES 3, 5, 9--Solicitors' Code of Conduct 2007 rr 7, 14, 17, and definition of 'recognised body' in r 24.01 amended on 31 March 2009.

TEXT AND NOTES--Solicitors' Recognised Bodies Regulations 2007 now the SRA Recognised Bodies Regulations 2009 (substituted on 31 March 2009, amended on 1 July 2009).

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693. Conditions on recognition.

As from a day to be appointed the following provisions have effect¹. Where the Solicitors Regulation Authority² decides to recognise a body³ it must grant that recognition subject to one or more conditions if the case is of a kind prescribed⁴ by rules made by the Authority⁵ and the Authority considers that it is in the public interest to do so⁶.

While a body is recognised⁷ the Authority must direct that the body's recognition is to have effect subject to one or more conditions if the case is of a prescribed kind and the Authority considers that it is in the public interest to do so⁸. In such circumstances as may be prescribed, the Authority may also direct that the body's recognition is to have effect subject to such conditions as the Authority may think fit⁹.

The conditions which may be imposed include:

- 812 (1) conditions requiring the body to take specified¹⁰ steps that will, in the opinion of the Authority, be conducive to the carrying on by the body of an efficient business¹¹;
- 813 (2) conditions which prohibit the body from taking any specified steps except with the approval of the Authority¹²;
- 814 (3) if rules provide for the recognition of legal services bodies¹³ which have one or more managers who are not legally qualified, a condition that all the managers of the body must be legally qualified¹⁴.

A body may appeal against a decision to impose conditions¹⁵.

1 The Administration of Justice Act 1985 s 9 is amended by the Legal Services Act 2007 Sch 19 paras 80, 81, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed. As to the Solicitors Act 1974 s 9 prior to amendment by the Legal Services Act 2007 see PARAS 687-688.

2 The Administration of Justice Act 1985 s 9 (as prospectively amended: see note 1) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by the Administration of Justice Act 1985 s 9(8) (as prospectively amended)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 Ie under the Administration of Justice Act 1985 s 9 (as prospectively amended: see note 1).

4 Ie for the purposes of the Administration of Justice Act 1985 s 9. For the purpose of s 9(2G) 'prescribed' means prescribed by rules made by the Authority: s 9(2G) (as prospectively added). Such rules are non-statutory in nature and outside the scope of this work. Rules made by the Authority may make provision about when conditions imposed under s 9 take effect (including provision conferring power on the Authority to direct that a condition is not to have effect until the conclusion of any appeal in relation to it): s 9(2I) (as so prospectively added).

5 Administration of Justice Act 1985 s 9(2F)(a) (as prospectively added: see note 1).

6 Administration of Justice Act 1985 s 9(2F)(b) (as prospectively added: see note 1).

7 Ie recognised under the Administration of Justice Act 1985 s 9.

8 Administration of Justice Act 1985 s 9(2G)(a) (as prospectively added: see note 1).

9 Administration of Justice Act 1985 s 9(2G)(b) (as prospectively added: see note 1).

10 For the purposes of the Administration of Justice Act 1985 s 9(2H) 'specified' means specified in the condition: s 9(2H) (as prospectively added: see note 1).

11 Administration of Justice Act 1985 s 9(2H)(a) (as prospectively added: see note 1).

12 Administration of Justice Act 1985 s 9(2H)(b) (as prospectively added: see note 1).

13 As to the meaning of 'legal services body' see the Administration of Justice Act 1985 s 9A; and PARA 690 (definition applied by s 9(8) (application of definition as prospectively added: see note 1)).

14 Administration of Justice Act 1985 s 9(2H)(c) (as prospectively added: see note 1). As to the meaning of 'manager' in relation to a body see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Administration of Justice Act 1985 s 9(8) (application of definition as so prospectively added)). As to the meaning of 'legally qualified' see s 9A; and PARA 690 note 11 (definition applied by s 9(8) (application of definition as so prospectively added)).

15 See the Administration of Justice Act 1985 Sch 2 para 2; and PARA 697.

UPDATE

693-694 Conditions on recognition, Information about suitability for recognition

These provisions have effect as from 31 March 2009: SI 2009/503.

693 Conditions on recognition

TEXT AND NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

NOTE 1--Reference to Legal Services Act 2007 Sch 19 paras 80, 81 should be to Sch 16 paras 80, 81.

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694. Information about suitability for recognition.

As from a day to be appointed the following provisions have effect¹. The Solicitors Regulation Authority² may give a notice³ if it is satisfied that it is necessary to do so for the purpose of investigating whether a recognised body continues to be suitable to be recognised⁴ or a manager of a recognised body⁵ who is not legally qualified⁶ continues to be suitable to be a manager of a recognised body⁷. A person may be required to provide an explanation of any information provided or document produced pursuant to the notice⁸. It is an offence for a person who knows or suspects an investigation is being, or is likely to be, conducted to falsify, conceal or destroy documents which he knows would be relevant to the investigation⁹. It is also an offence for a person to provide¹⁰ false or misleading information¹¹.

1 The Administration of Justice Act 1985 Sch 2 para 14 is substituted by the Legal Services Act 2007 Sch 16 para 81, 101 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed. As to the Administration of Justice Act 1985 Sch 2 para 14 prior to being substituted see PARA 710.

2 The Administration of Justice Act 1985 Sch 2 para 14 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible is the Solicitors Regulatory Authority (see PARA 619).

3 A notice under the Administration of Justice Act 1985 Sch 2 para 14 is a notice which requires the recognised body, an employee or manager of the recognised body, or a person who has an interest in the recognised body:

88 (1) to provide information, or information of a description, specified in the notice; or

89 (2) to produce documents, or documents of a description, specified in the notice (Sch 2 para 14(2), (3) (as prospectively substituted: see note 1)).

As to when a person has an interest in a recognised body see the Legal Services Act 2007 ss 72, 109; and PARA 1477. For the purposes of the Administration of Justice Act 1985 Sch 2 para 14, the Solicitors Act 1974 s 44B(4)-(7) (see PARA 888) applies in relation to a notice under that para as if it were a notice under s 44B and in relation to a person given a notice under the Administration of Justice Act 1985 Sch 2 para 14 as if that person were a person given a notice under the Solicitors Act 1974 s 44B, and references in s 44B(6), (7) to powers conferred by s 44B are to be read as references to powers conferred by the Administration of Justice Act 1985 Sch 2 para 14: Sch 2 para 14(4) (as prospectively substituted: see note 1). Where powers conferred by the Solicitors Act 1974 Sch 1 Pt 2 (see PARAS 890-894) are exercisable in relation to a person within the Administration of Justice Act 1985 Sch 2 para 14(3)(a)-(c), they continue to be so exercisable after the person has ceased to be a person within the paragraph in question: Sch 2 para 14(5).

4 ie suitable to be recognised under the Administration of Justice Act 1985 s 9.

5 As to the meaning of 'manager' see the Legal Services Act 2007 s 207 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(6) (application of definition added by the Legal Services Act 2007 Sch 16 para 86(g))).

6 As to the meaning of 'legally qualified' see the Administration of Justice Act 1985 s 9A; and PARA 690 note 11.

7 Administration of Justice Act 1985 Sch 2 para 14(1) (as prospectively substituted: see note 1).

8 See the Solicitors Act 1974 s 44BA; and PARA 888 (applied by the Administration of Justice Act 1985 Sch 2 para 14(6)).

9 See the Solicitors Act 1974 s 44BC(1); and PARA 888 (applied by the Administration of Justice Act 1985 Sch 2 para 14(7)).

10 This includes recklessly providing such information.

11 See the Solicitors Act 1974 s 44BC(3); and PARA 888 (applied by the Administration of Justice Act 1985 Sch 2 para 14(8)).

UPDATE

693-694 Conditions on recognition, Information about suitability for recognition

These provisions have effect as from 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/695. Penalty for pretending to be a recognised body.

695. Penalty for pretending to be a recognised body.

Until a day to be appointed the following provisions have effect¹. A body corporate must not describe itself or hold itself out as a body corporate for the time being recognised under the relevant statutory provisions² unless it is so recognised³. Where such an offence which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly⁴.

As from a day to be appointed the following provisions have effect⁵. A body must not describe itself or hold itself out as a body corporate for the time being recognised under the relevant statutory provisions⁶ unless it is so recognised⁷.

Where an offence under these provisions committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and punished accordingly⁸.

Proceedings for such an offence alleged to have been committed by an unincorporated body are to be brought in the name of that body (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if that body were a corporation⁹.

Where an offence under these provisions committed by an unincorporated body (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the body or any member of its governing body, that officer or member as well as the unincorporated body is guilty of the offence and liable to be proceeded against and punished accordingly¹⁰.

Where an offence under these provisions committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly¹¹.

1 The Administration of Justice Act 1985 s 10 is amended by the Legal Services Act 2007 Sch 16 paras 80, 83, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie under the Administration of Justice Act 1985 s 9: see PARA 688.

3 Administration of Justice Act 1985 s 10(1). Any body corporate which contravenes this provision is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 10(2). As to the standard scale see PARA 571 note 1.

4 Administration of Justice Act 1985 s 10(3).

5 See note 1.

6 Ie under the Administration of Justice Act 1985 s 9.

7 Administration of Justice Act 1985 s 10(1) (as prospectively amended: see note 1). Any body which contravenes this provision is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale: s 10(2) (as so prospectively amended). As to the standard scale see PARA 571 note 1.

8 Administration of Justice Act 1985 s 10(3) (as prospectively substituted: see note 1). Where the affairs of a body corporate are managed by its members, s 10(3) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate: s 10(4) (as so prospectively substituted). 'Officer', in relation to a body corporate, means any director, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity: s 10(10) (as so prospectively added).

9 Administration of Justice Act 1985 s 10(5) (as prospectively added: see note 1). A fine imposed on an unincorporated body on its conviction of an offence under s 10 is to be paid out of the funds of that body: s 10(6) (as so prospectively added). If an unincorporated body is charged with an offence under s 10, the Criminal Justice Act 1925 s 33 and the Magistrates' Courts Act 1980 Sch 3 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 666) have effect in like manner as in the case of a corporation so charged: Administration of Justice Act 1985 s 10(7) (as so prospectively added).

10 Administration of Justice Act 1985 s 10(8) (as prospectively added: see note 1).

11 Administration of Justice Act 1985 s 10(9) (as prospectively added: see note 1).

UPDATE

695 Penalty for pretending to be a recognised body

TEXT AND NOTES--Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/696. Refusal of recognition.

696. Refusal of recognition.

The Solicitors Regulation Authority may refuse an application for initial recognition or renewal of recognition¹ if:

815 (1) the Authority is satisfied that a director, member or shareowner is not a suitable person to be engaged in the direction or ownership of a recognised body by reason of that person's character, conduct or association²; or

816 (2) for any other reason the Authority thinks it proper in the public interest not to recognise the body³.

1 The grounds for refusal must be provided by the Authority to the applicant in writing: see the Solicitors' Recognised Bodies Regulations 2007 reg 3.1. If the Authority neither grants nor refuses recognition within three months of receiving the application the applicant may appeal to the Master of the Rolls: see reg 3.2. As to the right of appeal see PARA 697.

2 Solicitors' Recognised Bodies Regulations 2007 reg 2.2(a). As to the meaning of 'recognised body' see the Solicitors' Code of Conduct 2007 r 24; and PARA 687 note 3 (definition applied by the Solicitors' Recognised Bodies Regulations 2007 reg 9).

3 Solicitors' Recognised Bodies Regulations 2007 reg 2.2(b).

UPDATE

696 Refusal of recognition

TEXT AND NOTES--Solicitors' Recognised Bodies Regulations 2007 now the SRA Recognised Bodies Regulations 2009 (substituted on 31 March 2009, amended on 1 July 2009).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/697. Appeal against refusal to grant recognition.

697. Appeal against refusal to grant recognition.

Until a day to be appointed the following provisions have effect¹. Where the Solicitors Regulatory Authority² refuses an application by any body corporate for recognition³, that body may appeal to the Master of the Rolls against that refusal within one month of being notified of it⁴. On such an appeal, the Master of the Rolls may:

- 817 (1) direct the Authority to grant recognition of the body in question⁵; or
- 818 (2) affirm the refusal of the Authority⁶,

and he may make such order as to the payment of costs by the Authority or that body as he thinks fit⁷.

Rules made by the Authority with the concurrence of the Master of the Rolls may make provision, as respects any application for recognition that is neither granted nor refused by the Authority within such period as may be specified in the rules, for enabling an appeal to be brought under these provisions in relation to the application as if it had been refused by the Authority⁸.

The Master of the Rolls may make regulations about the procedure for appeals to him under these provisions⁹.

As from a day to be appointed the following provisions have effect¹⁰. A body may appeal to the High Court against a decision:

- 819 (a) to refuse an application by the body¹¹ for recognition¹²;
- 820 (b) where it has been decided to recognise a body and to impose a condition¹³ on the body's recognition¹⁴;
- 821 (c) to impose a condition while a body is recognised¹⁵ on that body's recognition¹⁶.

The decision of the High Court is final¹⁷.

1 The Administration of Justice Act 1985 Sch 2 para 2 is substituted by the Legal Services Act 2007 Sch 16 paras 80, 87 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Administration of Justice Act 1985 Sch 2 refers to the 'Society' or the 'Council' (ie the Law Society and the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4) (definitions applied by the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 ie under the Administration of Justice Act 1985 s 9: see PARA 688.

4 Administration of Justice Act 1985 Sch 2 para 2(1).

5 Administration of Justice Act 1985 Sch 2 para 2(2)(a).

6 Administration of Justice Act 1985 Sch 2 para 2(2)(b).

7 Administration of Justice Act 1985 Sch 2 para 2(2).

8 Administration of Justice Act 1985 Sch 2 para 2(3).

9 Administration of Justice Act 1985 Sch 2 para 2(4). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918.

10 See note 1.

11 *Re* recognition under the Administration of Justice Act 1985 s 9.

12 Administration of Justice Act 1985 Sch 2 para 2(1)(a) (as prospectively added: see note 1). On appeal under head (1) in the text the High Court may:

90 (1) affirm the decision of the Solicitors Regulation Authority (Sch 2 para 4(a));

91 (2) direct the Authority to grant the body recognition under s 9 free from conditions or subject to such conditions as the High Court may think fit (Sch 2 para 4(b));

92 (3) direct the Authority not to recognise the body (Sch 2 para 4(c));

93 (4) if the Authority has recognised the body, by order suspend the recognition (Sch 2 para 4(d)); or

94 (5) make such other order as the High Court thinks fit (Sch 2 para 4(e)).

13 *Re* a decision to impose a condition under the Administration of Justice Act 1985 s 9(2F) (see PARA 693).

14 See the Administration of Justice Act 1985 Sch 2 para 2(1)(b) (as prospectively substituted: see note 1). On an appeal under head (2) in the text the High Court may:

95 (1) affirm the decision of the Authority (Sch 2 para 2(4)(a));

96 (2) direct the Authority to grant the body recognition under s 9 free from conditions or subject to such conditions as the High Court may think fit (Sch 2 para 2(4)(b));

97 (3) direct the Authority not to recognise the body (Sch 2 para 2(4)(c));

98 (4) if the Authority has recognised the body, by order suspend the recognition (Sch 2 para 2(4)(d)); or

99 (5) make such other order as the High Court thinks fit (Sch 2 para 4(e)).

15 *Re* a decision to impose a condition under the Administration of Justice Act 1985 s 9(2H) (see PARA 693). Where the condition is one within s 9(2H)(b) (see PARA 693) the recognised body may appeal to the High Court against a decision by the Authority to refuse to approve the taking of any step for the purposes of that decision: see Sch 2 para 2(2) (as prospectively substituted: see note 1). On an appeal under Sch 2 para 2(2), the High Court may affirm the decision of the Authority, direct the Authority to approve the taking of one or more steps for the purposes of a condition within s 9(2H)(b) or make such other order as the High Court thinks fit: Sch 2 para 2(6) (as so prospectively substituted).

16 See the Administration of Justice Act 1985 Sch 2 para 2(1)(c) (as prospectively substituted: see note 1). On an appeal under head (3) in the text the High Court may:

100 (1) affirm the decision of the Authority (Sch 2 para 2(5)(a));

101 (2) direct that the body's recognition under s 9 is to have effect subject to such conditions as the High Court may think fit (Sch 2 para 2(5)(b));

102 (3) by order revoke the direction given by the Authority under s 9(2G) (see PARA 693) (Sch 2 para 2(5)(c)); or

103 (4) make such other order as the High Court thinks fit (Sch 2 para 2(5)(d)).

17 Administration of Justice Act 1985 Sch 2 para 2(8) (as prospectively substituted: see note 1). The High Court may make such order as it thinks fit as to the payment of costs: Sch 2 para 2(7) (as so prospectively substituted).

UPDATE

697 Appeal against refusal to grant recognition

TEXT AND NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/698. Expiry of recognition.

698. Expiry of recognition.

Recognition will automatically expire if:

- 822 (1) a recognised body¹ ceases to be registered:
520
- 37. (a) under the Companies Act 1985 Part 1 as an unlimited company, a company limited by shares or a company limited by guarantee²;
 - 38. (b) as an overseas company incorporated in an Establishment Directive state³;
 - 39. (c) as a limited liability partnership⁴; or
 - 40. (d) as a *societas Europaea*⁵;
- 521
- 823 (2) a winding-up order or administration order is granted⁶ or a resolution is passed for voluntary winding-up, or an administrative receiver is appointed, in respect of a recognised body⁷.

Recognition will also expire if:

- 824 (i) the renewal date stated on the last certificate of recognition has passed⁸;
- 825 (ii) the Solicitors Regulation Authority has not received an application for renewal of recognition along with the relevant fees, documents and information⁹; or
- 826 (iii) the Authority has decided that recognition will not be renewed¹⁰.

1 As to the meaning of 'recognised body' see the Solicitors' Code of Conduct 2007 r 24; and PARA 687 note 3 (definition applied by the Solicitors' Recognised Bodies Regulations 2007 r 9).

2 Solicitors' Recognised Bodies Regulations 2007 reg 8.1(a).

3 Solicitors' Recognised Bodies Regulations 2007 reg 8.1(b). An Establishment Directive state referred to in the text is a state to which EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained, applies: Solicitors' Code of Conduct 2007 r 24 (definition applied by the Solicitors' Recognised Bodies Regulations 2007 reg 9).

4 Solicitors' Recognised Bodies Regulations 2007 reg 8.1(c). A limited liability partnership referred to in the text is one formed by being incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq): Solicitors' Code of Conduct 2007 r 24.01 (definition applied by the Solicitors' Recognised Bodies Regulations 2007 reg 9).

5 Solicitors' Recognised Bodies Regulations 2007 reg 8.1(d). As to the meaning of '*societas Europaea*' see PARA 692 note 2.

6 Ie under the Insolvency Act 1986 Pt II.

7 Solicitors' Recognised Bodies Regulations 2007 reg 8.2.

8 Solicitors' Recognised Bodies Regulations 2007 reg 8.3(a).

9 Solicitors' Recognised Bodies Regulations 2007 reg 8.3(b).

10 Solicitors' Recognised Bodies Regulations 2007 reg 8.3(c).

UPDATE

698 Expiry of recognition

TEXT AND NOTES--Solicitors' Recognised Bodies Regulations 2007 now the SRA Recognised Bodies Regulations 2009 (substituted on 31 March 2009, amended on 1 July 2009).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/699. Revocation of recognition.

699. Revocation of recognition.

The Solicitors Regulation Authority may revoke the recognition of a recognised body¹ if that recognition was caused as a result of any error or fraud². It may also be revoked if the Authority is satisfied that the body would not be eligible to be recognised if it were at that time applying for initial recognition³.

Where an order is made:

- 827 (1) by the Solicitors Disciplinary Tribunal⁴ in the case of the director⁵ of a recognised body⁶; or
- 828 (2) by the High Court or the Court of Appeal that the name of a director of a recognised body is to be struck off the roll⁷ or that such a director is to be suspended from practice as a solicitor⁸; or
- 829 (3) as mentioned in head (1) or head (2) above in the case of a person employed by a recognised body and the act or omission constituting the ground on which the order was made was instigated or connived at by a director of the recognised body or, if the act or omission was a continuing act or omission, a director of the body had or reasonably ought to have had knowledge of its continuance⁹,

the Tribunal may, on an application made with respect to the recognised body by or on behalf of the Authority¹⁰, by order revoke its recognition¹¹.

1 As to the meaning of 'recognised body' see the Solicitors' Code of Conduct 2007 r 24; and PARA 687 note 3 (definition applied by the Solicitors' Recognised Bodies Regulations 2007 reg 9).

2 Solicitors' Recognised Bodies Regulations 2007 reg 7.1(a).

3 Solicitors' Recognised Bodies Regulations 2007 reg 7.1(b).

4 ie under the Solicitors Act 1974 s 47: see PARAS 907, 909. As to the Tribunal see PARA 906.

5 Any reference to a director of a recognised body in any of heads (1)-(3) in the text includes a reference to a person who was a director of the body at the time of the conduct leading to the making of the order there referred to: Administration of Justice Act 1985 Sch 2 para 21(3). As from a day to be appointed the reference to director in Sch 2 para 21 is amended to read 'manager' by the Legal Services Act 2007 Sch 16 paras 80, 109(a)-(d). At the date at which this volume states the law no such day had been appointed.

6 Administration of Justice Act 1985 Sch 2 para 21(1)(a) (prospectively amended: see note 5).

7 As to striking off the roll see PARA 909.

8 Administration of Justice Act 1985 Sch 2 para 21(1)(b) (prospectively amended: see note 5). As to suspension see PARA 909.

9 Administration of Justice Act 1985 Sch 2 para 21(1)(c) (prospectively amended: see note 5). As from a day to be appointed the reference in Sch 2 para 21(1)(c) to a person employed by a recognised body includes a reference to a person who was so employed at the time of the conduct leading to the making of the order referred to: Sch 2 para 21(4) (prospectively added by the Legal Services Act 2007 Sch 16 paras 80, 109(e)). At the date at which this volume states the law no such day had been appointed.

10 The Administration of Justice Act 1985 Sch 2 para 21 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4))

(definition applied by the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

11 Administration of Justice Act 1985 Sch 2 para 21(1). The Tribunal must not take a case into consideration during any period within which proceedings by way of appeal may be brought which may result in Sch 2 para 21(1) being rendered inapplicable in that case, or while any such proceedings are pending: Sch 2 para 21(2).

UPDATE

699 Revocation of recognition

TEXT AND NOTES 1-3--Solicitors' Recognised Bodies Regulations 2007 now the SRA Recognised Bodies Regulations 2009 (substituted on 31 March 2009, amended on 1 July 2009).

NOTES 5, 9--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/A. RECOGNITION ETC/700. Appeals against suspension etc.

700. Appeals against suspension etc.

As from a day to be appointed the following provisions have effect¹. The Solicitors' Regulation Authority² may make rules³ for appeals to the High Court against decisions made by the Authority under the rules:

- 830 (1) to suspend or revoke the recognition of any body⁴;
- 831 (2) not to approve, as suitable to be the manager of a recognised body, an individual who is not legally qualified (or to withdraw such approval)⁵.

In relation to such an appeal the High Court may make such order as it thinks fit as to payment of costs⁶. The decision of the High Court is final⁷.

1 The Administration of Justice Act 1985 s 9 is amended by the Legal Services Act 2007 Sch 19 paras 80, 81, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed. As to the Administration of Justice Act 1985 s 9 prior to amendment by the Legal Services Act 2007 see PARA 688.

2 The Administration of Justice Act 1985 s 9 (as prospectively amended) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by the Administration of Justice Act 1985 s 9(8) (as prospectively amended: see note 1)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 The rules under the Administration of Justice Act 1985 s 9 (see PARA 688).

4 Administration of Justice Act 1985 s 9(2B)(a) (as prospectively added: see note 1).

5 Administration of Justice Act 1985 s 9(2B)(b) (as prospectively added: see note 1). The rules may provide for appeals against decisions within head (2) in the text to be brought by the individual to whom the decision relates (as well as the body): s 9(2C) (as so prospectively added). As to the meaning of 'manager' in relation to a body see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Administration of Justice Act 1985 s 9(8) (application of definition as so prospectively added)). As to the meaning of 'legally qualified' see s 9A; and PARA 690 note 11 (definition applied by s 9(8) (application of definition as so prospectively added)). As to the meaning of 'recognised body' see PARA 687 note 3.

6 Administration of Justice Act 1985 s 9(2D) (as prospectively added: see note 1).

7 Administration of Justice Act 1985 s 9(2E) (as prospectively added: see note 1).

UPDATE

700 Appeals against suspension etc

TEXT AND NOTE 1--Reference to Legal Services Act 2007 Sch 19 paras 80, 81 should be to Sch 16 paras 80, 81. Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/B. RESTRICTIONS ON EMPLOYMENT/701. Restrictions on employment of disqualified persons.

B. RESTRICTIONS ON EMPLOYMENT

701. Restrictions on employment of disqualified persons.

The provisions relating to the restriction on the employment of certain disqualified persons by solicitors¹ also apply in relation to recognised bodies².

As from a day to be appointed the following provisions also apply³. No recognised body (or manager or employee of such a body) may, except in accordance with a written permission granted by the Solicitors Regulation Authority⁴, permit certain persons⁵ to be a manager of the body or have an interest in the body⁶.

Permission may be granted for such period and subject to such conditions as the Authority thinks fit⁷.

A person aggrieved by the refusal of the Authority to grant such a permission or by any conditions attached by the Authority to the grant of any such permission may appeal to the High Court which may confirm the refusal or the conditions, as the case may be, or grant a permission under this paragraph for such period and subject to such conditions as it thinks fit⁸. The decision of the High Court on an appeal is final⁹.

1 Ie the Solicitors Act 1974 s 41 (except s 41(4)) (see PARA 924).

2 See the Administration of Justice Act 1985 Sch 2 para 9(1). As from a day to be appointed such provisions also apply to any manager or employee of a recognised body: see the Administration of Justice Act 1985 Sch 2 para 9(1) (as prospectively amended by the Legal Services Act 2007 Sch 16 para 96(a)). At the date at which this volume states the law no such day had been appointed.

3 The Administration of Justice Act 1985 Sch 2 para 9(2)-(7) is added by the Legal Services Act 2007 Sch 2 para 96(b) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

4 The Administration of Justice Act 1985 Sch 2 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible is the Solicitors Regulation Authority (see PARA 619).

5 Ie a person who to the knowledge of the recognised body (or, as the case may be, the manager or employee) is a person who is disqualified from practising as a solicitor by reason of one of the facts mentioned in the Solicitors Act 1974 s 41(1)(a), (b) or (c) (see PARA 924) or in respect of whom there is a direction in force under s 47(2)(g) (see PARA 909): Administration of Justice Act 1985 Sch 2 para 9(3) (as prospectively added: see note 3).

6 Administration of Justice Act 1985 Sch 2 para 9(2) (as prospectively added: see note 3). For this purpose a person has an interest in the body if he has an interest in the body within the meaning of the Legal Services Act 2007 Pt 5 (see ss 72, 109) (see PARA 1477 note 3).

7 Administration of Justice Act 1985 Sch 2 para 9(4) (as prospectively added: see note 3).

8 Administration of Justice Act 1985 Sch 2 para 9(5) (as prospectively added: see note 3). In relation to an appeal under Sch 2 para 9(5) the High Court may make such order as it thinks fit as to payment of costs: Sch 2 para 9(6) (as so prospectively added).

9 Administration of Justice Act 1985 Sch 2 para 9(7) (as prospectively added: see note 3).

UPDATE

701 Restrictions on employment of disqualified persons

NOTES 2, 3--References to Legal Services Act 2007 Sch 2 para 96 should be to Sch 16 para 96. Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/B. RESTRICTIONS ON EMPLOYMENT/702. Penalties on employer and employee.

702. Penalties on employer and employee.

The provisions that apply to solicitors relating to the failure to disclose the fact of having been struck off or suspended¹ also apply in relation to recognised bodies².

As from a day to be appointed the following provisions also have effect³. It is an offence for a person ('P') to whom certain provisions apply⁴:

- 832 (1) to seek or accept from any person an interest in a recognised body⁵, without previously informing that person (and, if different, the recognised body) that P is a person to whom those provisions apply⁶; or
- 833 (2) to seek or accept a position as a manager of a recognised body, without previously informing that body that P is such a person⁷.

1 Ie the Solicitors Act 1974 s 42(1), (1A) (see PARA 925).

2 Administration of Justice Act 1985 Sch 2 para 10(1) (amended by the Legal Services Act 2007 Sch 18 para 55). As from a day to be appointed such provisions also apply to any manager or employee of a recognised body: see the Administration of Justice Act 1985 Sch 2 para 10(1) (as prospectively amended by the Legal Services Act 2007 Sch 16 para 97(b)). At the date at which this volume states the law no such day had been appointed.

3 The Administration of Justice Act 1985 Sch 2 para 10(2)-(6) is added by the Legal Services Act 2007 Sch 16 para 97(c) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

4 Ie a person who is disqualified from practising as a solicitor by reason of one or more of the facts mentioned in the Solicitors Act 1974 s 41(1)(a), (b) or (c) or in respect of whom there is a direction in force under s 47(2)(g): Administration of Justice Act 1985 Sch 2 para 10(3) (as prospectively added: see note 2). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 2 para 10(4) (as so prospectively added). The Solicitors Act 1974 s 42(2) (see PARA 925) applies in relation to an offence under the Administration of Justice Act 1985 Sch 2 para 10(5) as it applies to an offence under the Solicitors Act 1974 s 42: Administration of Justice Act 1985 Sch 2 para 10(5) (as so prospectively added). As to the standard scale see PARA 571 note 1.

5 For the purposes of the Administration of Justice Act 1985 Sch 2 para 10(2)(a) a person seeks or accepts an interest in a recognised body if the person seeks or accepts an interest which if it were obtained by the person would result in the person having an interest in that body within the meaning of the Legal Services Act 2007 Pt 5 (see ss 72, 109; and PARA 1477 note 2): Administration of Justice Act 1985 Sch 2 para 10(6) (prospectively added: see note 2).

6 Administration of Justice Act 1985 Sch 2 para 10(2)(a) (as prospectively added: see note 2).

7 Administration of Justice Act 1985 Sch 2 para 10(2)(b) (as prospectively added: see note 2).

UPDATE

702 Penalties on employer and employee

TEXT AND NOTES--Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/B. RESTRICTIONS ON EMPLOYMENT/703. Control of convicted persons.

703. Control of convicted persons.

The Solicitors Regulation Authority¹ may make an application to the Solicitors Disciplinary Tribunal for an order restricting the employment or remuneration of certain persons² by a recognised body³. Acting in contravention of any such order is an offence⁴.

1 The Administration of Justice Act 1985 Sch 2 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible for solicitors is the Solicitors Regulation Authority (see PARA 619).

2 Ie persons who have been convicted of certain offences or whose conduct in relation to the business of the recognised body he is or was employed by makes it undesirable for him to be so employed or remunerated: see the Administration of Justice Act 1985 Sch 2 para 11(1); and PARA 926.

3 See the Administration of Justice Act 1985 Sch 2 para 11; the Solicitors Act 1974 s 43; and PARA 926 et seq.

4 See the Administration of Justice Act 1985 Sch 2 para 12; the Solicitors Act 1974 s 44; and PARA 929.

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C. ACCOUNTS, CLIENTS' MONEY AND COMPENSATION

704. Accounts rules; disclosure of information etc.

Where rules¹ relating to the keeping of accounts are applied² to recognised bodies³, the Solicitors Regulation Authority⁴ is at liberty to disclose a report on or information about a recognised body's accounts obtained in pursuance of any such rules for use in investigating the possible commission of an offence by that body and for use in connection with any prosecution of that body consequent on the investigation⁵.

1 le rules made under the Solicitors Act 1974 s 32(1) or (2): see PARA 835 et seq. See the Solicitors' Accounts Rules 1998; and PARA 835 et seq.

2 le by virtue of the Administration of Justice Act 1985 s 9(2)(f): see PARA 688.

3 As to the meaning of 'recognised body' see PARA 687 note 3.

4 The Administration of Justice Act 1985 Sch 2 refers to the 'Council' (ie the Council of the Law Society). However in practice the body responsible under such circumstances is the Solicitors Regulation Authority (see PARA 619).

5 Administration of Justice Act 1985 s 9(6), Sch 2 para 3 (amended by the Access to Justice Act 1999 Sch 7 para 2(b), Sch 15, Pt II). As from a day to be appointed the Administration of Justice Act 1985 Sch 2 para 3 is substituted by the Legal Services Act 2007 Sch 16 para 89(b), Sch 23 and also applies where rules under the Solicitors Act 1974 s 32(1) are applied to managers or employees of recognised bodies in accordance with the Administration of Justice Act 1985 s 9(2)(fb). As to the meaning of 'manager' see the Legal Services Act 2007 s 207; and PARA 369 note 17. At the date at which this volume states the law no such day had been appointed.

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

704 Accounts rules; disclosure of information etc

NOTE 5--Reference to Legal Services Act 2007 Sch 16 para 89(b) should be to Sch 16 para 88.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/C. ACCOUNTS, CLIENTS' MONEY AND COMPENSATION/705. Accounts rules; interest on clients' money.

705. Accounts rules; interest on clients' money.

Until a day to be appointed¹, where rules relating to the keeping of accounts² are applied to recognised bodies³ and contain a provision⁴ requiring money received for or on account of a client⁵ to be kept on deposit in a separate account for the benefit of a client, then a recognised body which in pursuance of the rules maintains an account in which it keeps money received or held for or on account of its clients generally is not liable to account to any person for interest received by it on money in that account⁶.

As from a day to be appointed⁷, where rules relating to the keeping of accounts⁸ are applied to recognised bodies⁹ and contain a provision¹⁰ requiring the paying of interest¹¹ to a client, any other person or any trust for whom money is held, then a recognised body is not liable to account to them for interest received by the recognised body on money held at a bank or building society in an account for which money is received or held for or on account of:

- 834 (1) clients of the recognised body, other persons or trusts, generally; or
- 835 (2) that client, person or trust separately¹².

1 The Administration of Justice Act 1985 is amended by the Legal Services Act 2007 Sch 16 para 89(a)(ii) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed. As to the provision as amended see notes 7-12.

2 The rules made under the Solicitors Act 1974 s 32 (see PARA 388).

3 The by virtue of the Administration of Justice Act 1985 s 9(2)(f): see PARA 688. As to the meaning of 'recognised body' see PARA 687 note 3.

4 The such a provision as is mentioned in the Solicitors Act 1974 s 33(1)(a) (see PARA 842): see the Administration of Justice Act 1985 Sch 2 para 4(1). See further PARA 843.

5 The definition of 'client' in the Solicitors Act 1974 s 87(1) (see PARA 835 note 6) applies for the purposes of (1) the Administration of Justice Act 1985 Sch 2; and (2) any provision of the Solicitors Act 1974 in so far as it has effect in relation to a recognised body by virtue of the Administration of Justice Act 1985 Sch 2 as if for any reference to a solicitor there were substituted a reference to a recognised body: Sch 2 para 1(4).

6 Administration of Justice Act 1985 Sch 2 para 4(1). Nothing in any such rules or in these provisions, however, affects any arrangement in writing between a recognised body and any of its clients as to the application of the client's money or interest on it: Sch 2 para 4(2)(a) (amended by the Courts and Legal Services Act 1990 s 125(7), Sch 20).

7 See note 6.

8 The rules made under the Solicitors Act 1974 s 32 (see PARA 388).

9 The by virtue of the Administration of Justice Act 1985 s 9(2)(f): see PARA 688. Similar provision is also made as from a day to be appointed in relation to rules applied in accordance with s 9(2)(fb) to managers or employees of recognised bodies: see Sch 2 para 4ZA (prospectively added by the Legal Services Act 2007 Sch 16 para 90). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'manager' see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(6) (application of definition added by the Legal Services Act 2007 Sch 16 para 86(g)).

10 le such a provision as is mentioned in the Solicitors Act 1974 s 33(1) (see PARA 842): see the Administration of Justice Act 1985 Sch 2 para 4(1) (prospectively amended by the Legal Services Act 2007 Sch 16 para 89(a)(i)). See further PARA 843.

11 Or sums in lieu of and equivalent to interest.

12 Administration of Justice Act 1985 Sch 2 para 4(1) (as prospectively amended: see note 10).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

705 Accounts rules; interest on clients' money

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/C. ACCOUNTS, CLIENTS' MONEY AND COMPENSATION/706. Accountants' reports.

706. Accountants' reports.

Certain provisions¹ relating to the delivery of an accountant's report to the Solicitors Regulation Authority² apply to a recognised body³ as they apply to a solicitor⁴. As from a day to be appointed, certain provisions⁵ also apply to managers or employees of recognised bodies as they apply to a solicitor⁶.

1 Ie until a day to be appointed the Solicitors Act 1974 s 34(1), (2) and, subject to any rules made under s 34 (see PARA 847) and applied in accordance with the Administration of Justice Act 1985 s 9(2)(f), the Solicitors Act 1974 s 34(3) and, as from a day to be appointed, where rules made under s 34 are applied in accordance with the Administration of Justice Act 1985 s 9(2)(f), the Solicitors Act 1974 s 34(9), (10) (see PARA 851): see the Administration of Justice Act 1985 Sch 2 para 5 (prospectively substituted by the Legal Services Act 2007 Sch 16 para 92).

2 The Administration of Justice Act 1985 Sch 2 refers to the 'Council' (ie the Council of the Law Society). However in practice the body responsible is the Solicitors Regulation Authority: see PARA 619.

3 As to the meaning of 'recognised body' see PARA 687 note 3.

4 See the Administration of Justice Act 1985 s 9(6), Sch 2 para 5. Until a day to be appointed a certificate under the hand of the Secretary of State is evidence that a recognised body has or, as the case may be, has not delivered to the Solicitors Regulation Authority an accountant's report or supplied any evidence as required under the Solicitors Act 1974 s 34 or under the Solicitors' Accounts Rules 1998, unless the contrary is proved: Administration of Justice Act 1985 Sch 2 para 5(2) (substituted by the Legal Services Act 2007 Sch 16 para 92).

5 Ie where rules made under s 34 are applied in accordance with the Administration of Justice Act 1985 s 9(2)(f), the Solicitors Act 1974 s 34(9), (10) (see PARA 851): see the Administration of Justice Act 1985 Sch 2 para 5A (prospectively added by the Legal Services Act 2007 Sch 16 para 93).

6 See the Administration of Justice Act 1985 Sch 5 para 5A (prospectively added by the Legal Services Act 2007 Sch 16 para 93).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/C. ACCOUNTS, CLIENTS' MONEY AND COMPENSATION/707. Inspection of bank accounts.

707. Inspection of bank accounts.

Where rules¹ relating to the inspection of bank accounts by the Solicitors Regulation Authority² apply to recognised bodies³ the Authority may disclose information about a recognised body's accounts obtained in pursuance of those rules for use in investigating the possible commission of an offence by that body and for use in connection with any prosecution of that body consequent on the investigation⁴. As from a day to be appointed similar provisions also apply to managers or employees of recognised bodies⁵.

1 Ie where rules made under the Solicitors Act 1974 s 33A(1) (see PARA 845) are applied to recognised bodies in accordance with the Administration of Justice Act 1985 s 9(2)(f) (see PARA 688).

2 The Administration of Justice Act 1985 Sch 2 refers to the 'Council' (ie the Council of the Law Society). However in practice the body responsible is the Solicitors Regulation Authority: see PARA 619.

3 As to the meaning of 'recognised body' see PARA 687 note 3.

4 See the Administration of Justice Act 1985 Sch 2 para 4A (added by the Access to Justice Act 1999 Sch 7 para 5).

5 See the Administration of Justice Act 1985 Sch 2 para 4A (prospectively substituted by the Legal Services Act 2007 Sch 16 para 91).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/C. ACCOUNTS, CLIENTS' MONEY AND COMPENSATION/708. Compensation.

708. Compensation.

Until a day to be appointed the following provisions have effect¹. On an application for recognition² a body corporate must pay to the Solicitors Regulation Authority³, together with any fee required⁴ to be paid, a contribution to the compensation fund⁵ of such amount as the Authority may from time to time determine⁶. On being required to do so by the Authority, every recognised body⁷ must pay a further contribution to the compensation fund of such amount as the Authority may from time to time determine, but the Authority may only require such a contribution if the recognised body has held or received clients' money at any time within the period of 12 months ending immediately before the day on which the requirement is imposed, and no such contribution has been required from that body within that period⁸.

Where the Authority is satisfied:

- 836 (1) that a person has suffered or is likely to suffer loss in consequence of dishonesty on the part of an officer⁹ or employee of a recognised body in connection with that body's business (or purported business) as a recognised body or in connection with any trust of which it is or formerly was a trustee¹⁰; or
- 837 (2) that a person has suffered or is likely to suffer hardship in consequence of failure on the part of a recognised body to account for money which has come into its possession in connection with that body's business (or purported business) as a recognised body or in connection with any trust of which it is or formerly was a trustee¹¹; or
- 838 (3) that a member of a recognised body has suffered or is likely to suffer loss or hardship by reason of his liability to any of that body's clients¹² in consequence of some act or default of any officer or employee of that body in circumstances where, but for the liability of that member, a grant might have been made out of the compensation fund to some other person¹³,

the Authority may make a grant out of the fund for the purpose of relieving that loss or hardship¹⁴.

As from a day to be appointed the following provisions have effect¹⁵. The Authority¹⁶ may make rules¹⁷ concerning the grant of compensation by the Authority in respect of loss that a person has suffered, or is likely to suffer, as a result of:

- 839 (a) an act or omission of a recognised body or former recognised body¹⁸;
- 840 (b) an act or omission of a manager or employee, or former manager or employee, of a recognised body or former recognised body¹⁹;
- 841 (c) the exercise by the Authority of any of its powers of intervention²⁰.

1 The Administration of Justice Act 1985 Sch 2 para 6 is substituted by the Legal Services Act 2007 Sch 16 paras 80, 94 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 le under the Administration of Justice Act 1985 s 9: see PARA 688 et seq.

3 The Administration of Justice Act 1985 Sch 2 refers to the Council of the Law Society or the Law Society. However in practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

4 le by virtue of the Administration of Justice Act 1985 s 9(2)(a): see PARA 688.

5 As to the compensation fund see PARA 862.

6 Administration of Justice Act 1985 Sch 2 para 6(1) (substituted by the Courts and Legal Services Act 1990 s 90).

7 As to the meaning of 'recognised body' see PARA 687 note 3.

8 Administration of Justice Act 1985 Sch 2 para 6(1A)-(1C) (added by the Courts and Legal Services Act 1990 s 90; and prospectively repealed (see note 1)). The Solicitors Act 1974 Sch 2 (prospectively repealed) applies to amounts so paid to the Authority as if they were annual contributions or special levies paid in pursuance of Sch 2 para 2(1)(a), (b): Administration of Justice Act 1985 Sch 2 para 6(1D) (as so added and prospectively repealed). As to the regulation of the contributions of registered foreign lawyers to the compensation fund see the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991; and PARA 868.

9 For these purposes, references to an officer of a recognised body include references to a director, manager or secretary of that body and references to a direct, in relation to a limited liability partnership, are references to a member of the limited liability partnership: Administration of Justice Act 1985 Sch 2 para 1(3) (amended by SI 2001/1090; and prospectively repealed by the Legal Services Act 2007 Sch 16 paras 80, 88, Sch 23).

10 Administration of Justice Act 1985 Sch 2 para 6(2)(a) (prospectively repealed: see note 1).

11 Administration of Justice Act 1985 Sch 2 para 6(2)(b) (prospectively repealed: see note 1).

12 As to the meaning of 'client' see the Solicitors Act 1974 s 87(1); and PARA 835 note 6 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(5)).

13 Administration of Justice Act 1985 Sch 2 para 6(2)(c) (prospectively repealed: see note 1).

14 Administration of Justice Act 1985 Sch 2 para 6(2) (prospectively repealed: see note 1). The Solicitors Act 1974 s 36(3)-(7) (prospectively substituted) (see PARAS 863, 866) applies in relation to such grants: see the Administration of Justice Act 1985 Sch 2 para 6(3) (prospectively repealed: see note 1).

15 The Solicitors Act 1974 s 36(1) is prospectively substituted by the Legal Services Act 2007 Sch 16 paras 1, 37 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

16 See note 3.

17 As to such rules see the Solicitors Act 1974 s 36; and PARA 863 (prospectively applied by the Administration of Justice Act 1985 Sch 2 para 6(1)). Compensation rules may require contributions to be made to compensation funds and any amount so payable may be recovered as a debt due to the Authority: see the Solicitors Act 1974 s 36A(2), (3); and PARA 862 (prospectively applied by the Administration of Justice Act 1985 Sch 2 para 6(2)).

18 Solicitors Act 1974 s 36(1)(a) (prospectively substituted (see note 15) and prospectively modified by the Administration of Justice Act 1985 Sch 2 para 6(1)).

19 Solicitors Act 1974 s 36(1)(b) (prospectively substituted (see note 15) and prospectively modified (see note 18)).

20 Solicitors Act 1974 s 36(1)(c) (prospectively substituted (see note 15)). The power of intervention mentioned in the text refers to the Authority's powers under Sch 1 Pt 2 (see PARA 890 et seq).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

708 Compensation

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/C. ACCOUNTS, CLIENTS' MONEY AND COMPENSATION/709. Redress for inadequate professional services.

709. Redress for inadequate professional services.

Until a day to be appointed¹ the powers exercisable by the Solicitors Regulation Authority² in respect of the provision of inadequate professional services by a solicitor are also exercisable in respect of a recognised body notwithstanding that it is no longer a recognised body³.

1 The Solicitors Act 1974 Sch 1A and the Administration of Justice Act 1985 Sch 2 para 13 are both repealed by the Legal Services Act 2007 Sch 16, paras 78, 100, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 Sch 1A and the Administration of Justice Act 1985 Sch 2 para 13 both refer to the 'Council' (ie the Council of the Law Society). However in practice the body responsible is the Solicitors Regulation Authority (see PARA 619).

3 See the Solicitors Act 1974 Sch 1A; the Administration of Justice Act 1985 Sch 2 para 13; and PARA 895.

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/D. DISCIPLINARY POWERS/710. Examination of files.

D. DISCIPLINARY POWERS

710. Examination of files.

Until a day to be appointed the following provisions have effect¹. Where the Solicitors Regulation Authority² is satisfied that it is necessary to do so for the purpose of investigating:

- 842 (1) where a recognised body³ has failed to comply with any requirement imposed by or by virtue of the Administration of Justice Act 1985 or any rules⁴ applicable to it⁵;
- 843 (2) whether any professional services provided by a recognised body were not of the quality which it is reasonable to expect of it as a recognised body⁶; or
- 844 (3) whether there are grounds for making, or making an application to the Tribunal for it to make, an order⁷ with respect to a person who is or was employed or remunerated by a recognised body in connection with its business⁸,

the Authority may give notice to the recognised body to which the complaint relates requiring the production or delivery to any person appointed by the Authority, at a time and a place to be fixed by the Authority, of all relevant documents in the body's possession⁹.

1 The Administration of Justice Act 1985 Sch 2 para 14 is substituted by the Legal Services Act 2007 Sch 16 para 81 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed. As to the Administration of Justice Act 1985 Sch 2 para 14 as so substituted see PARA 694.

2 The Administration of Justice Act 1985 Sch 2 refers to the 'Council' (ie the Council of the Law Society). However in practice the body responsible for solicitors is the Solicitors Regulation Authority (see PARA 619).

3 As to the meaning of 'recognised body' see PARA 687 note 3. References to a recognised body in relation to a complaint, other than such a complaint as is mentioned in the Administration of Justice Act 1985 Sch 2 para 16(1)(a) (see PARA 712) include references to a body corporate that was recognised under s 9 (see PARA 688) at the time when the conduct to which the complaint relates took place: Sch 2 para 1(2).

4 ie rules made by virtue of the Administration of Justice Act 1985 s 9.

5 Administration of Justice Act 1985 Sch 2 para 14(1)(a) (Sch 2 para 14(1)(a), (b) substituted and Sch 2 para 14(1)(c) added by the Access to Justice Act 1999 Sch 7 para 12).

6 Administration of Justice Act 1985 Sch 2 para 14(1)(b) (as substituted: see note 5).

7 ie an order under the Administration of Justice Act 1985 s 43(2) (see PARA 906).

8 Administration of Justice Act 1985 Sch 2 para 14(1)(c) (as added: see note 5).

9 Administration of Justice Act 1985 Sch 2 para 14(1) (amended by the Access to Justice Act 1999 Sch 7 para 12). The Solicitors Act 1974 Sch 1 paras 9(2)-(12), 12-16 apply to the powers conferred by the Administration of Justice Act 1985 Sch 2 para 14(1) as they apply to the powers conferred by the Solicitors Act 1974 Sch 1 para 9(1): Administration of Justice Act 1985 Sch 2 para 14(2). Accordingly, any reference:

104 (1) to a solicitor is to be construed as including a reference to the body with respect to which the powers are exercisable by virtue of Sch 2 para 14(1) (Sch 2 para 14(2)(a));

105 (2) to a person appointed, or to a requirement, under the Solicitors Act 1974 Sch 2 para 9(1) is to be construed as including a reference to a person appointed, or to a requirement, under the Administration of Justice Act 1985 Sch 2 para 14(1) (Sch 2 para 14(2)(b)); and

106 (3) to any such documents as are mentioned in the Solicitors Act 1974 Sch 2 para 9(1) is to be construed as including a reference to any such documents as are mentioned in the Administration of Justice Act 1985 Sch 2 para 14(1) (Sch 2 para 14(2)(c)).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

710 Examination of files

NOTE 1--Reference to Legal Services Act 2007 Sch 16 para 81 should be to Sch 16 para 101.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/D. DISCIPLINARY POWERS/711. Investigation costs.

711. Investigation costs.

Until a day to be appointed the following provisions have effect¹. Where the Solicitors Regulation Authority² investigates a failure or apprehended failure by a recognised body to comply with any requirement imposed by or by virtue of the Administration of Justice Act 1985 or any rules applicable to it³ the Authority may direct the body to pay to them an amount which they calculate as the cost to them of the investigation or in their opinion represents a reasonable contribution towards that cost⁴.

As from a day to be appointed the following provisions have effect⁵. The Authority may make regulations prescribing charges to be paid to them by recognised bodies⁵ who are the subject of a discipline investigation⁶.

1 The Administration of Justice Act 1985 Sch 2 para 14A (added by the Access to Justice Act 1999 Sch 7 para 12) is substituted by the Legal Services Act 2007 Sch 16 para 102 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Administration of Justice Act 1985 Sch 2 para 14A refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible is the Solicitors Regulation Authority (see PARA 619).

3 ie by virtue of the Administration of Justice Act 1985 s 9 (see PARA 688).

4 See the Administration of Justice Act 1985 Sch 2 para 14A (as added: see note 1).

5 The Administration of Justice Act 1985 Sch 2 para 14A applies in relation to a manager or employee of a recognised body as it applies in relation to a recognised body: Sch 2 para 14A(5) (as added and prospectively substituted (see note 1)).

6 Administration of Justice Act 1985 Sch 2 para 14A(1) (as added and prospectively substituted (see note 1)). A discipline investigation is an investigation carried out by the Authority into a failure or apprehended failure by a recognised body to comply with any requirement imposed by or by virtue of the Solicitors Act 1974 or any rules applicable to it by virtue of the Administration of Justice Act 1985 s 9: Sch 2 para 14A(2) (as so added and prospectively substituted). Regulations under these provisions may make different provision for different cases or purposes and provide for the whole or part of a charge payable under the regulations to be repaid in such circumstances as may be prescribed by the regulations: Sch 2 para 14A(3) (as so added and prospectively substituted). Any charge which a recognised body is required to pay under regulations under Sch 2 para 14A is recoverable by the Authority as a debt due to it from the recognised body: Sch 2 para 14A(4) (as so added and prospectively substituted).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/D. DISCIPLINARY POWERS/712. Complaints to the Solicitors Disciplinary Tribunal.

712. Complaints to the Solicitors Disciplinary Tribunal.

The Solicitors Disciplinary Tribunal has jurisdiction to hear and determine any of the following complaints made to it with respect to a recognised body¹, namely a complaint:

- 845 (1) that the body has (while a recognised body) been convicted by any court in the United Kingdom of a criminal offence which renders it unsuitable to be recognised²;
- 846 (2) that the body has failed to comply with provisions requiring the delivery of an accountant's report to the Solicitors Regulation Authority³ or with any rules applicable⁴ to it⁵;
- 847 (3) that the body has acted in contravention of the statutory provisions⁶ restricting the employment of certain disqualified persons or of any conditions subject to which a permission has been granted⁷ to employ such persons⁸; or
- 848 (4) that the body has knowingly acted in contravention of an order⁹ relating to the employment of such persons or of any conditions subject to which a permission has been granted under such an order¹⁰.

Such a complaint may be made to the Tribunal by any person¹¹.

As from a day to be appointed¹² the Tribunal also has jurisdiction to hear and determine any of the following complaints made to it with respect to a manager¹³ or employee of a recognised body (the 'relevant person'), namely a complaint:

- 849 (a) that the relevant person has been convicted by any court of a criminal offence which renders that person unsuitable to be a manager or employee (or both) of a recognised body¹⁴;
- 850 (b) that the relevant person has failed to comply with any requirement imposed by or by virtue of the Administration of Justice Act 1985 or any rules applicable¹⁵ to it¹⁶;
- 851 (c) that the relevant person has acted in contravention of the statutory provisions¹⁷ restricting the employment of certain disqualified persons or of any conditions subject to which a permission has been granted under those provisions¹⁸;
- 852 (d) that the relevant person has knowingly acted in contravention of an order relating to the employment of certain persons¹⁹ or of any conditions subject to which a permission has been granted under such an order²⁰.

1 As to the meaning of 'recognised body' see PARA 687 note 3. See also PARA 710 note 2.

2 Administration of Justice Act 1985 s 9(6), Sch 2 para 16(1)(a). As from a day to be appointed the words 'in the United Kingdom' are repealed by the Legal Services Act 2007 Sch 16 para 104(a), Sch 23. At the date at which this volume states the law no such day had been appointed.

3 I.e. the Solicitors Act 1974 s 34 (see PARA 847); Administration of Justice Act 1985 Sch 2 para 16(1)(b). However as from a day to be appointed Sch 2 para 16(1)(b) is amended to apply to any requirement imposed by or by virtue of the Administration of Justice Act 1985: Sch 2 para 16(1)(b) (prospectively amended by the Legal Services Act 2007 Sch 16 para 104(b)). At the date at which this volume states the law no such day had been appointed.

- 4 le by virtue of the Administration of Justice Act 1985 s 9: see PARA 688.
- 5 Administration of Justice Act 1985 Sch 2 para 16(1)(b).
- 6 le the Solicitors Act 1974 s 41 (see PARA 924): see the Administration of Justice Act 1985 Sch 2 para 16(1)(c). However, as from a day to be appointed Sch 2 para 16(1)(c) also applies to Sch 2 para 9(2) (see PARA 701): see the Administration of Justice Act 1985 Sch 2 para 16(1)(c) (as prospectively substituted by the Legal Services Act 2007 Sch 16 para 104(c)). At the date at which this volume states the law no such day has been appointed.
- 7 le under the Solicitors Act 1974 s 41 (see PARA 924).
- 8 Administration of Justice Act 1985 Sch 2 para 16(1)(c).
- 9 le such an order as is mentioned in the Solicitors Act 1974 s 44(2) (see PARA 929).
- 10 Administration of Justice Act 1985 Sch 2 para 16(1)(d).
- 11 Administration of Justice Act 1985 Sch 2 para 16(2). As to the procedure on such complaints see the Solicitors Act 1974 s 46(7)-(11) (applied and modified by the Administration of Justice Act 1985 Sch 2 para 17); and PARA 906.
- 12 The Administration of Justice Act 1985 Sch 2 para 16(1A) is added by the Legal Services Act 2007 Sch 16 para 104(d) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.
- 13 As to the meaning of 'manager' in relation to a body see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Administration of Justice Act 1985 s 9(8) (application of definition as so prospectively added)).
- 14 Administration of Justice Act 1985 Sch 2 para 16(1A)(a) (prospectively added: see note 12).
- 15 le any rules applicable to them by virtue of the Administration of Justice Act 1985 s 9.
- 16 Administration of Justice Act 1985 Sch 2 para 16(1A)(b) (prospectively added: see note 12).
- 17 le the Solicitors Act 1974 s 41 (see PARA 924) and the Administration of Justice Act 1985 Sch 2 para 9(2) (see PARA 701).
- 18 Administration of Justice Act 1985 Sch 2 para 16(1A)(c) (prospectively added: see note 12).
- 19 le an order under the Solicitors Act 1974 s 43(2) (see PARA 927).
- 20 Administration of Justice Act 1985 Sch 2 para 16(1A)(d) (prospectively added: see note 12).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

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Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/D. DISCIPLINARY POWERS/713. Powers of the Solicitors Regulation Authority with respect to recognised bodies.

713. Powers of the Solicitors Regulation Authority with respect to recognised bodies.

As from a day to be appointed the following provisions have effect¹. The following apply where the Solicitors Regulation Authority² is satisfied that a recognised body, or a manager³ or employee of a recognised body, has failed to comply with a requirement imposed by or by virtue of the Administration of Justice Act 1985 or any rules⁴ applicable to that person⁵.

The Authority may do one or both of the following:

- 853 (1) give the person a written rebuke⁶;
- 854 (2) direct the person to pay a penalty not exceeding £2,000⁷.

The Authority must make rules⁸ prescribing the circumstances in which the Authority may decide to take action under heads (1) and (2) and about the practice and procedure to be followed by the Authority in relation to such action⁹.

Before making such rules the Authority must consult the Solicitors Disciplinary Tribunal¹⁰.

1 The Administration of Justice Act 1985 Sch 2 para 14B is added by the Legal Services Act 2007 Sch 16 para 103 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Administration of Justice Act 1985 Sch 2 para 14B refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible is the Solicitors Regulation Authority (see PARA 619).

3 As to the meaning of 'manager' see the Legal Services Act 2007 s 207 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(6) (application of definition added by the Legal Services Act 2007 Sch 16 para 86(g)). As to the meaning of 'recognised body' see PARA 687 note 3.

4 ie any rules applicable to that person by virtue of the Administration of Justice Act 1985 s 9.

5 Administration of Justice Act 1985 Sch 2 para 14B(1) (as prospectively added: see note 1). Schedule 2 para 14B is without prejudice to any power conferred on the Authority, or any other person, to make an application or complaint to the Tribunal: Sch 2 para 14B(13) (as so prospectively added).

6 Administration of Justice Act 1985 Sch 2 para 14B(2)(a) (as prospectively added: see note 1). The Authority may publish details of any action it has taken under Sch 2 para 14B(2)(a) or (b), if it considers it to be in the public interest to do so: Sch 2 para 14B(3) (as so prospectively added). The Authority may not publish under Sch 2 para 14B(3) details of any action under Sch 2 para 14B(2)(a) or (b) during the period within which an appeal against the decision to take the action, in the case of action under Sch 2 para 14B(2)(b), the amount of the penalty or the decision to publish the details, may be made under Sch 2 para 14C or, if such an appeal has been made, until such time as it is determined or withdrawn: Sch 2 para 14B(6) (as so prospectively added).

7 Administration of Justice Act 1985 Sch 2 para 14B(2)(b) (as prospectively added: see note 1). See note 6. Where the Authority takes action against a person under Sch 2 para 14B(2)(b), or decides to publish under Sch 2 para 14B(3) details of such action under Sch 2 para 14B(2)(a) or (b), it must notify the person in writing that it has done so: Sch 2 para 14B(4) (as so prospectively added). A penalty imposed under Sch 14B(2)(b) does not become payable until the end of the period during which an appeal against the decision to impose the penalty, or the amount of the penalty, may be made under Sch 2 para 14C (see PARA 714) or if such an appeal is made, such time as it is determined or withdrawn: Sch 2 para 14B(5) (as so prospectively added). A penalty under Sch 2 para 14B may be recovered as a debt due to the Authority, and is to be forfeited to Her Majesty: Sch 2 para

14B(9) (as so prospectively added). The Lord Chancellor may (after consulting the Authority), by order, amend Sch 2 para 14B(2)(b) so as to substitute for the amount for the time being specified such other amount as may be specified in the order: see Sch 2 para 14B(10), (11) (as so prospectively added).

8 It must also makes rules governing the publication under the Administration of Justice Act 1985 Sch 2 para 14B(3) of details of action taken under Sch 2 para 14B(2)(a) or (b) and may make such other rules in connection with the exercise of its powers under Sch 2 para 14B as it considers appropriate: see Sch 2 para 14B(7) (as prospectively added: see note 1).

9 See the Administration of Justice Act 1985 Sch 2 para 14B(7) (as prospectively added: see note 1).

10 Administration of Justice Act 1985 Sch 2 para 14B(8) (as prospectively added: see note 1).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

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714. Appeals against a decision by the Solicitors Regulation Authority.

As from a day to be appointed the following provisions have effect¹. A person may appeal² against:

- 855 (1) a decision by the Solicitors Regulation Authority³ to rebuke that person⁴ if a decision is also made to publish details of the rebuke⁵;
- 856 (2) a decision by the Authority to impose a penalty on that person⁶ or the amount of that penalty⁷;
- 857 (3) a decision by the Authority to publish⁸ details of any action taken against that person⁹.

On such an appeal the Solicitors Disciplinary Tribunal has power to make an order which:

- 858 (a) affirms the decision of the Authority¹⁰;
- 859 (b) revokes the decision of the Authority¹¹;
- 860 (c) in the case of a penalty imposed¹², varies the amount of the penalty¹³;
- 861 (d) in the case of a recognised body, contains certain¹⁴ provisions¹⁵;
- 862 (e) in the case of a manager or employee of a recognised body, contains certain¹⁶ provision¹⁷;
- 863 (f) makes such provision as the Tribunal thinks fit as to payment of costs¹⁸.

An appeal from the Tribunal lies to the High Court, at the instance of the Authority or the person in respect of whom the order of the Tribunal was made¹⁹ and the High Court has the power to make such an order on appeal as it thinks fit²⁰. Any decision of the High Court on an appeal is to be final²¹.

The above provisions are without prejudice to any power conferred on the Tribunal in connection with an application or complaint made to it²².

1 The Administration of Justice Act 1985 Sch 2 para 14C is added by the Legal Services Act 2007 Sch 16 para 103 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 46(9)(b), (10)(a), (b), (11), (12) (see PARAS 629, 906) apply in relation to appeals under the Administration of Justice Act 1985 Sch 2 para 14C as they apply in relation to applications or complaints, except that the Solicitors Act 1974 s 46(11) of that section is to be read as if for 'the applicant' to 'application' there were substituted 'any party to the appeal': Administration of Justice Act 1985 Sch 2 para 14C(2) (as prospectively added: see note 1). Rules under the Solicitors Act 1974 s 46(9)(b) may, in particular, make provision about the period during which an appeal under this paragraph may be made: Administration of Justice Act 1985 Sch 2 para 14C(3) (as so prospectively added).

3 The Administration of Justice Act 1985 Sch 2 para 14C refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible is the Solicitors Regulation Authority (see PARA 619).

4 ie under the Administration of Justice Act 1985 Sch 2 para 14B(2)(a) (see PARA 713).

5 Administration of Justice Act 1985 Sch 2 para 14C(1)(a) (as prospectively added: see note 1).

- 6 le impose a penalty under the Administration of Justice Act 1985 Sch 2 para 14B(2)(b) (see PARA 713).
- 7 Administration of Justice Act 1985 Sch 2 para 14C(1)(b) (as prospectively added: see note 1).
- 8 le publish under the Administration of Justice Act 1985 Sch 2 para 14B(3) details of any action taken under s 14B(2)(a) or (b) (see PARA 713).
- 9 Administration of Justice Act 1985 Sch 2 para 14C(1)(c) (as prospectively added: see note 1).
- 10 Administration of Justice Act 1985 Sch 2 para 14C(4)(a) (as prospectively added: see note 1).
- 11 Administration of Justice Act 1985 Sch 2 para 14C(4)(b) (as prospectively added: see note 1).
- 12 le imposed under the Administration of Justice Act 1985 Sch 2 para 14B(2)(b) (see PARA 713).
- 13 Administration of Justice Act 1985 Sch 2 para 14C(4)(c) (as prospectively added: see note 1).
- 14 le contains provision for any of the matters mentioned in the Administration of Justice Act 1985 Sch 2 para 18(2) (see PARA 715).
- 15 Administration of Justice Act 1985 Sch 2 para 14C(4)(d) (as prospectively added: see note 1).
- 16 le contains provision for any of the matters mentioned in the Administration of Justice Act 1985 Sch 2 para 18A(2) (see PARA 716).
- 17 Administration of Justice Act 1985 Sch 2 para 14C(4)(e) (as prospectively added: see note 1). Where, by virtue of Sch 2 para 14C(4)(e), an order contains provision for any of the matters mentioned in Sch 2 para 18A(2)(c) of paragraph 18A, Sch 2 para 18(5), (6) applies as if the order had been made under Sch 2 para 18A(2)(c): Sch 2 para 14C(5) (as so prospectively added).
- 18 Administration of Justice Act 1985 Sch 2 para 14C(4)(f) (as prospectively added: see note 1).
- 19 Administration of Justice Act 1985 Sch 2 para 14C(6) (as prospectively added: see note 1).
- 20 Administration of Justice Act 1985 Sch 2 para 14C(7) (as prospectively added: see note 1).
- 21 Administration of Justice Act 1985 Sch 2 para 14C(8) (as prospectively added: see note 1).
- 22 Administration of Justice Act 1985 Sch 2 para 14C(9) (as prospectively added: see note 1).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/D. DISCIPLINARY POWERS/715. Powers of the Solicitors Disciplinary Tribunal with respect to recognised bodies.

715. Powers of the Solicitors Disciplinary Tribunal with respect to recognised bodies.

Where on the hearing of a complaint made¹ to it the Solicitors Disciplinary Tribunal is satisfied that a recognised body²:

- 864 (1) has been convicted³ by any court in the United Kingdom of a criminal offence which renders it unsuitable to be recognised⁴; or
- 865 (2) has failed to comply with the statutory provisions⁵ requiring the delivery of an accountant's report to the Solicitors Regulation Authority or with any rules applicable⁶ to it⁷; or
- 866 (3) has acted⁸ in contravention of certain statutory provisions, conditions or orders relating to the employment of disqualified persons⁹; or
- 867 (4) until a day to be appointed¹⁰, has failed to comply with any direction given¹¹ to it by the Solicitors Regulation Authority in respect of inadequate professional services¹²,

the Tribunal may, if it thinks fit, make one or more of the following orders¹³:

- 868 (a) an order revoking the recognition of the body¹⁴ to which the complaint relates¹⁵;
- 869 (b) an order directing the payment by that body of a penalty¹⁶ to be forfeited to Her Majesty¹⁷;
- 870 (c) an order requiring that body to pay the costs incurred in bringing against it the proceedings before the Tribunal or a contribution towards those costs of such amount as the Tribunal considers reasonable¹⁸.

1 Ie under the Administration of Justice Act 1985 Sch 2 but as from a day to be appointed excluding Sch 2 para 16(1A) (see PARA 712); Sch 2 para 18(1) (prospectively amended by the Legal Services Act 2007 Sch 16 para 104(b)). At the date at which this volume states the law no such day had been appointed. As to complaints under the Administration of Justice Act 1985 Sch 2 para 16(1A) see PARA 716.

2 As to the meaning of 'recognised body' see PARA 687 note 3. See also PARA 710 note 2.

3 Ie as mentioned in the Administration of Justice Act 1985 Sch 2 para 16(1)(a); see PARA 712.

4 Administration of Justice Act 1985 Sch 2 para 18(1)(a).

5 Ie the Solicitors Act 1974 s 34 (see PARA 847); Administration of Justice Act 1985 Sch 2 para 18(1)(b). However as from a day to be appointed Sch 2 para 18(1)(b) is amended to apply to any requirement imposed by or by virtue of the Administration of Justice Act 1985: Sch 2 para 18(1)(b) (prospectively amended by the Legal Services Act 2007 Sch 16 para 106(b)). At the date at which this volume states the law no such day had been appointed.

6 Ie any such rules as are mentioned in the Administration of Justice Act 1985 Sch 2 para 16(1)(b); see PARA 712.

7 Administration of Justice Act 1985 Sch 2 para 18(1)(b).

8 Ie has acted as mentioned in the Administration of Justice Act 1985 Sch 2 para 16(1)(c) or (d); see PARA 712.

9 Administration of Justice Act 1985 Sch 2 para 18(1)(c).

10 The Administration of Justice Act 1985 Sch 2 para 18(1)(d) is repealed by the Legal Services Act 2007 Sch 16 para 106(c), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

11 Ie by virtue of the Administration of Justice Act 1985 Sch 2 para 13: see PARA 895.

12 Administration of Justice Act 1985 Sch 2 para 18(1)(d).

13 Administration of Justice Act 1985 Sch 2 para 18(1). On the hearing of a complaint under Sch 2 para 13(3) relating to a direction given by the Authority, the Tribunal may, if it thinks fit (whether or not it makes any order on the hearing under the above provisions), direct that the Council's direction is to be treated, for enforcement purposes, as if it were contained in an order made by the High Court: Sch 2 para 18(3) (prospectively repealed by the Legal Services Act 2007 Sch 16 para 106(e), Sch 23).

14 Ie recognition under the Administration of Justice Act 1985 s 9.

15 Administration of Justice Act 1985 Sch 2 para 18(2)(a).

16 Until a day to be appointed the penalty is expressed to be £3,000 (see the Administration of Justice Act 1985 Sch 2 para 18(2)(b)), and the Solicitors Act 1974 s 47(4), (5) (see PARA 909) applies to this sum: see the Administration of Justice Act 1985 Sch 2 para 18(4). As from a day to be appointed Sch 2 para 18(2)(b) is amended and Sch 2 para 18(3) is repealed by the Legal Services Act 2007 Sch 16 para 106(e), Sch 23. In exercise of the power so conferred, the Lord Chancellor made the Solicitors Disciplinary Tribunal (Increase in Penalty) Order 1990, SI 1990/1011, superseded, in so far as it affects the Solicitors Act 1974 s 47, by the Courts and Legal Services Act 1990 s 92(2). At the date at which this volume states the law, no further order increasing the amount of the penalty has been made. It is, however, apprehended that the effect of these changes is to increase the penalty under the Administration of Justice Act 1985 Sch 2 para 18(2)(b) to £5,000. Where the Tribunal is satisfied that more than one allegation is proved, it may impose a separate penalty with respect to each allegation: Sch 2 para 18(2A) (added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 57).

17 Administration of Justice Act 1985 Sch 2 para 18(2)(b).

18 Administration of Justice Act 1985 Sch 2 para 18(2)(c).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

715 Powers of the Solicitors Disciplinary Tribunal with respect to recognised bodies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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716. Powers of the Solicitors Disciplinary Tribunal with respect to managers of employees of recognised bodies.

As from a day to be appointed the following provisions have effect¹. Where, on the hearing of a complaint² made to it the Solicitors Disciplinary Tribunal is satisfied that a manager³ or employee of a recognised body⁴:

- 871 (1) has been convicted⁵ by any court of a criminal offence which renders that person unsuitable to be a manager or employee (or both) of a recognised body⁶;
- 872 (2) has failed to comply with any requirement imposed by or by virtue of the Administration of Justice Act 1985 or any rules⁷ applicable to the relevant person⁸;
- or
- 873 (3) has acted⁹ as mentioned in contravention of certain provisions¹⁰,

the Tribunal may, if it thinks fit, make one or more of the following orders:

- 874 (a) an order directing the payment by the relevant person of a penalty to be forfeited to Her Majesty¹¹;
- 875 (b) an order requiring the Solicitors Regulation Authority¹² to consider taking such steps as the Tribunal may specify in relation to the relevant person¹³;
- 876 (c) if the person is not a solicitor, an order which states one or more of certain matters¹⁴;
- 877 (d) an order requiring the Authority to refer to an appropriate regulator¹⁵ any matter relating to the conduct of the relevant person¹⁶.

1 The Administration of Justice Act 1985 Sch 2 para 18A is added by the Legal Services Act 2007 Sch 16 para 107 as from day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie under the Administration of Justice Act 1985 Sch 2 para 16(1A) (see PARA 712).

3 As to the meaning of 'manager' see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(6) (application of definition added by the Legal Services Act 2007 Sch 16 para 86(g))).

4 As to the meaning of 'recognised body' see PARA 687 note 3.

5 Ie as mentioned in the Administration of Justice 1985 Sch 2 para 16(1A)(a) (see PARA 712).

6 Administration of Justice Act 1985 Sch 2 para 18A(1)(a).

7 Ie rules applicable to the relevant person by virtue of the Administration of Justice Act 1985 s 9.

8 Administration of Justice Act 1985 Sch 2 para 18A(1)(b).

9 Ie has acted as mentioned in the Administration of Justice Act 1985 Sch 2 para 16(1A)(c) or (d) (see PARA 712).

10 See the Administration of Justice Act 1985 Sch 2 para 18A(1)(c).

11 Administration of Justice Act 1985 Sch 2 para 18A(2)(a).

12 The Administration of Justice Act 1985 Sch 2 para 18A refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible for regulating solicitors is the Solicitors Regulation Authority.

13 Administration of Justice Act 1985 Sch 2 para 18A(2)(b).

14 Administration of Justice Act 1985 Sch 2 para 18A(2)(c). The matters referred to in the text are:

107 (1) that as from the specified date no solicitor or employee of a solicitor is to employ or remunerate, in connection with the practice carried on by that solicitor, the person with respect to whom the order is made and no recognised body, or manager or employee of such a body, is to employ or remunerate that person, in connection with the business of the recognised body, except in accordance with the permission of the Authority (Sch 2 para 18A(3)(a));

108 (2) that as from the specified date no recognised body or manager or employee of such a body is to, except in accordance with the permission of the Authority, permit the person with respect to whom the order is made to be a manager of the body (Sch 2 para 18A(3)(b));

109 (3) that as from the specified date no recognised body or manager or employee of such a body is to, except in accordance with the permission of the Authority, permit the person with respect to whom the order is made to have an interest in the body (Sch 2 para 18A(3)(c)).

For this purpose a person has an interest in a body if the person has an interest in the body within the meaning of the Legal Services Act 2007 Pt 5 (see ss 72, 109; and PARA 1477 note 3): Administration of Justice Act 1985 Sch 2 para 18A(4).

The provisions of the Solicitors Act 1974 s 44(1)-(1C), (3), (4) apply in relation to an order under head (3) as they apply in relation to s 43(2), except that references to provision within s 43(2)(a), (b) or (c) are to be read as references to provision within the Administration of Justice Act 1985 Sch 2 para 18A(3)(a), (b) or (c): Sch 2 para 18A(5). The Solicitors Act 1974 s 44(2), the Administration of Justice Act 1985 Sch 2 para 16(1)(d), (1A)(d) and the Courts and Legal Services Act 1990 Sch 14 para 15(3A) apply in relation to an order under head (3) as they apply in relation to an order under the Solicitors Act 1974 s 43(2): Administration of Justice Act 1985 Sch 2 para 18A(6).

15 For this purpose 'appropriate regulator' in relation to the relevant person means:

110 (1) if the person is an authorised person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007, any relevant approved regulator (within the meaning of that Act (see PARA 358)) in relation to that person; and

111 (2) if the person carries on activities which are not reserved legal activities, any body which regulates the carrying on of such activities by the person (Administration of Justice Act 1985 Sch 2 para 18A(7)).

16 Administration of Justice Act 1985 Sch 2 para 18A(3)(b).

UPDATE

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717. Power to inspect files.

The statutory provisions¹ entitling the Solicitors Regulation Authority to inspect the file of proceedings in bankruptcy relating to any solicitor against whom proceedings in bankruptcy have been taken, and to be supplied with office copies of the proceedings, also apply to proceedings which have been brought with respect to a recognised body² for any of the following purposes, namely:

- 878 (1) the winding up of the body³;
- 879 (2) the appointment of a receiver or manager of property of the body⁴; or
- 880 (3) the appointment of an administrator⁵,

as they apply in relation to proceedings in bankruptcy which have been taken against a solicitor⁶.

1 In the Solicitors Act 1974 s 83: see PARA 625.

2 As to the meaning of 'recognised body' see PARA 687 note 3.

3 Administration of Justice Act 1985 Sch 2 para 30(a).

4 Administration of Justice Act 1985 Sch 2 para 30(b). As from a day to be appointed Sch 2 para 30(b) is substituted by the Legal Services Act 2007 Sch 16 para 116 and head (2) applies instead to the appointment of an administrative receiver within the meaning of the Insolvency Act 1986. At the date at which this volume states the law no such day had been appointed.

5 Administration of Justice Act 1985 Sch 2 para 30(c) (amended by SI 2003/2096). An administrator referred to in the text is one appointed under the Insolvency Act 1986 Sch B1 (see **COMPANIES** vol 15 (2009) PARAS 1339, 1377).

6 Administration of Justice Act 1985 Sch 2 para 30.

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718. Intervention by the Solicitors Regulation Authority.

The powers exercisable on intervention by the Solicitors Regulation Authority¹ in relation to a solicitor and his practice² are also exercisable in relation to a recognised body³ and its business⁴ where:

- 881 (1) the Authority is satisfied that a recognised body has failed to comply with any rules applicable⁵ to it⁶; or
 - 882 (2) a person has been appointed receiver or manager of property of a recognised body⁷; or
 - 883 (3) the Authority has reason to suspect dishonesty on the part of any officer or employee of a recognised body in connection with that body's business or in connection with any trust of which that body is or formerly was a trustee⁸; or
 - 884 (4) a complaint is made to the Authority that there has been undue delay on the part of a recognised body in connection with any matter in which it was instructed on behalf of a client or with any controlled trust⁹, the Authority by notice in writing invites the body to give an explanation within such period¹⁰ following the giving of the notice as may be specified in it¹¹ and the body fails within that period to give an explanation which the Authority regards as satisfactory¹²; or
 - 885 (5) the recognition¹³ of a body corporate has been revoked by an order of the Solicitors Disciplinary Tribunal¹⁴ or has expired and no further recognition of that body has been granted¹⁵; or
 - 886 (6) until a day to be appointed¹⁶ a winding-up order has been made with respect to a recognised body, or a resolution for voluntary winding up has been passed with respect to it (other than a resolution passed solely for the purposes of its reconstruction or amalgamation with another corporate body) or a recognised body has entered administration¹⁷; or
 - 887 (7) as from a day to be appointed¹⁸ the Authority is satisfied that it is necessary to exercise certain powers¹⁹ in relation to a recognised body to protect:
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- 41. (a) the interests of clients (or former or potential clients) of the recognised body²⁰;
 - 42. (b) the interests of the beneficiaries of any trust of which the recognised body is or was a trustee²¹; and
 - 43. (c) the interests of the beneficiaries of any trust of which a person who is or was a manager or employee of the recognised body is or was a trustee in that person's capacity as such a manager or employee²².
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Where the powers of intervention are exercisable in relation to a recognised body in accordance with the above heads, they continue to be so exercisable after that body's recognition has been revoked or has otherwise ceased to be in force²³.

¹ The Administration of Justice Act 1985 Sch 2 para 32 refers to the 'Council' (ie the Council of the Law Society) and is prospectively amended by the Legal Services Act 2007 Sch 16 para 119(1), (2) to refer to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974

(see s 87(1); and PARA 602 note 4)) (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 le the powers conferred by the Solicitors Act 1974 Sch 1 Pt II (paras 5-16) (see PARA 891 et seq). In connection with the application of Sch 1 Pt II for the purposes of the Administration of Justice Act 1985 Sch 2 any reference:

112 (1) to the solicitor or to his practice is to be construed as including a reference to the corporate body in relation to which the powers conferred by the Solicitors Act 1974 Sch 1 Pt II are exercisable by virtue of the Administration of Justice Act 1985 Sch 2 para 32, 33 or 34(1) (see the text and notes 3-15) or to its business (or former business) as a recognised body (Sch 2 para 35(a));

113 (2) to the Solicitors Act 1974 Sch 1 para 1 (see PARA 890) is to be construed as including a reference to the Administration of Justice Act 1985 Sch 2 para 32 or 34(1) (Sch 2 para 35(b)); and

114 (3) to the Solicitors Act 1974 Sch 1 para 3 (see PARA 890) is to be construed as including a reference to the Administration of Justice Act 1985 Sch 2 para 33 (Sch 2 para 35(c)).

As from a day to be appointed the word 'corporate' in head (1) is repealed by the Legal Services Act 2007 Sch 16 para 122(b), Sch 23 and the following also apply in connection with the application of the Solicitors Act 1974 Sch 1 Pt II for the purposes of the Administration of Justice Act 1985 Sch 2:

115 (a) the Solicitors Act 1974 Sch 1 para 6(2)(a) (see PARA 892) is to be construed as including a reference to sums of money held by or on behalf of the recognised body in connection with any trust of which a person who is or was a manager of the recognised body is or was a trustee in his capacity as such a manager (Administration of Justice Act 1985 Sch 2 para 35(d) (Sch 2 para 35(d)-(g) added by the Legal Services Act 2007 Sch 16 para 122));

116 (b) the Solicitors Act 1974 Sch 1 para 9 (see PARA 891) is to be construed:

16. (i) as if Sch 1 para 9(1) included a reference to documents in the possession or under the control of the recognised body in connection with any trust of which a person who is or was a manager or employee of the recognised body is or was a trustee in his capacity as such a manager or employee; and
16

17. (ii) as applying to such a manager or employee and documents and property in his possession or under his control in connection with such a trust as it applies to a solicitor and documents and property in the possession or under the control of the solicitor (Administration of Justice Act 1985 Sch 2 para 35(e) (as so prospectively added));
17

117 (c) the Solicitors Act 1974 Sch 1 para 11(1) is to be construed as including a power for the Authority to apply to the High Court for an order for the appointment of a new trustee to a trust in substitution for a person who is a trustee, in his capacity as a manager or employee of the recognised body (Administration of Justice Act 1985 Sch 2 para 35(f) (as so prospectively added)); and

118 (d) the Solicitors Act 1974 Sch 1 para 13A (see PARA 894) is to be read as if the references to a former partner were references in the case of a recognised body which is a partnership, to a former partner in the partnership and, in any other case, to a manager or former manager of the recognised body (Administration of Justice Act 1985 Sch 2 para 35(g) (as so prospectively added)).

3 As to the meaning of 'recognised body' see PARA 687 note 3. As from a day to be appointed the provisions also apply to a manager of such a body: see the Administration of Justice Act 1985 Sch 2 para 32(1)(a) (prospectively amended by the Legal Services Act 2007 Sch 16 para 119). At the date at which this volume states the law no such day had been appointed.

4 Administration of Justice Act 1985 Sch 2 para 32(1).

5 le by virtue of the Administration of Justice Act 1985 s 9 (see PARA 688).

6 Administration of Justice Act 1985 Sch 2 para 32(1)(a). However, until a day to be appointed, the powers of intervention are only exercisable by virtue of Sch 2 para 32(1)(a) if the authority has given the recognised body notice in writing that the Authority is satisfied that the body has failed to comply with the rules specified in the

notice and also (at the same or any later time) notice that those powers are accordingly exercisable in its case by virtue of Sch 2 para 32(1)(a): Sch 2 para 32(2) (prospectively repealed by the Legal Services Act 2007 Sch 16 para 116(7), Sch 23).

7 Administration of Justice Act 1985 Sch 2 para 32(1)(b).

8 Administration of Justice Act 1985 Sch 2 para 32(1)(d). As from a day to be appointed Sch 2 para 32(1)(d) is amended the Legal Services Act 2007 Sch 16 para 119(4) so that it also applies to managers and accordingly the word 'manager' is substituted for the word 'officer' and the words 'that body's business, any trust of which that body is or was a trustee, any trust of which the manager or employee is or was a trustee in his capacity as such a manager or employee or the business of another body in which the manager or employee is or was a manager or employee or the practice (or former practice) of the manager or employee' are substituted for the words 'that body's business or in connection with any trust of which that body is or formerly was a trustee'. At the date at which this volume states the law no such day had been appointed.

9 Administration of Justice Act 1985 Sch 2 para 33(a). As to the meaning of 'client' see the Solicitors Act 1974 s 87(1); and PARA 835 note 6 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(5)). 'Controlled trust', in relation to a recognised body, means a trust of which it is sole trustee or co-trustee only with one or more of its officers or employees: Sch 2 para 1(4). As to the meaning of 'officer' see PARA 708 note 9. As from a day to be appointed Sch 2 para 33(a) is substituted by the Legal Services Act 2007 Sch 16 para 120(a) and reads as follows: 'the Authority is satisfied that there has been undue delay on the part of a recognised body in connection with any matter in which it is or was acting on behalf of a client or with any trust of which it is or was a trustee, or on the part of a person who is or was a manager or employee of a recognised body in connection with any trust of which the manager or employee is or was a trustee in his capacity as such a manager or employee'.

10 That period must not be less than eight days: Administration of Justice Act 1985 Sch 2 para 33(b).

11 Administration of Justice Act 1985 Sch 2 para 33(b).

12 Administration of Justice Act 1985 Sch 2 para 32(1)(c). The Authority must give notice of the failure to the body and (at the same or any later time) notice that the powers conferred by the Solicitors Act 1974 Sch 1 Pt II are accordingly exercisable in its case by virtue of the Administration of Justice Act 1985 Sch 2 para 33: Sch 2 para 33(d).

13 Ie under the Administration of Justice Act 1985 s 9 (see PARA 688).

14 Ie an order under the Administration of Justice Act 1985 Sch 2. As from a day to be appointed the revocation must be in accordance with rules under s 9: see the Administration of Justice Act 1985 Sch 2 para 34(1)(a) (prospectively amended by the Legal Services Act 2007 Sch 16 para 121(b)). At the date at which this volume states the law no such day had been appointed.

15 Administration of Justice Act 1985 Sch 2 para 34(1). In such a case the powers conferred by the Solicitors Act 1974 Sch 1 Pt II are exercisable in relation to the body corporate and its former business as a recognised body as they are exercisable in relation to a solicitor and his practice: Administration of Justice Act 1985 Sch 2 para 34(1). As from a day to be appointed the word 'corporate' is repealed by the Legal Services Act 2007 Sch 16 para 121(a), Sch 23. At the date at which this volume states the law no such day had been appointed.

16 As from a day to be appointed the Administration of Justice Act 1985 Sch 2 para 32(1)(c) is substituted by the Legal Services Act 2007 Sch 16 para 119(3) and head (6) will instead read 'a relevant insolvency event occurs in relation to a recognised body'. For this purpose a relevant insolvency event occurs in relation to a recognised body if:

- 119 (1) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under the Insolvency Act 1986 s 89 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 941) (Administration of Justice Act 1985 Sch 2 para 32(1A)(a) (prospectively added by the Legal Services Act 2007 Sch 16 para 119(6)));
- 120 (2) the body enters administration within the meaning of the Insolvency Act 1986 Sch B1 para 1(2)(b) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 212) (Administration of Justice Act 1985 Sch 2 para 32(1A)(b) (as so prospectively added));
- 121 (3) an administrative receiver within the meaning of the Insolvency Act 1986 s 251 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 8) is appointed (Administration of Justice Act 1985 Sch 2 para 32(1A)(c) (as so prospectively added));

122 (4) a meeting of creditors is held in relation to the body under the Insolvency Act 1985 s 95 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 942) (Administration of Justice Act 1985 Sch 2 para 32(1A)(d) (as so prospectively added));

123 (5) an order for the winding up of the body is made (Administration of Justice Act 1985 Sch 2 para 32(1A)(e) (as so prospectively added)).

At the date at which this volume states the law no such day had been appointed.

17 Administration of Justice Act 1985 Sch 2 para 32(1)(c) (amended by SI 2003/2096).

18 The Administration of Justice Act 1985 Sch 2 para 32(1)(e) is added by the Legal Services Act 2007 Sch 16 para 119(5) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

19 The powers conferred by the Solicitors Act 1974 Sch 1 Pt 2 (see PARAS 890-894).

20 Administration of Justice Act 1985 Sch 2 para 32(1)(e)(i) (as prospectively added: see note 18).

21 Administration of Justice Act 1985 Sch 2 para 32(1)(e)(ii) (as prospectively added: see note 18).

22 Administration of Justice Act 1985 Sch 2 para 32(1)(e)(iii) (as prospectively added: see note 18).

23 Administration of Justice Act 1985 Sch 2 para 34(2).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(v) Recognised bodies/E. PRIVILEGE FROM DISCLOSURE ETC/719. Privilege from disclosure.

E. PRIVILEGE FROM DISCLOSURE ETC

719. Privilege from disclosure.

Any enactment or instrument making special provision in relation to a solicitor or other legal representative as to the disclosure of information, or as to the production, seizure or removal of documents, with respect to which a claim to professional privilege could be maintained, has effect in relation to a recognised body¹ as it has effect in relation to a solicitor, with any necessary modifications².

Until a day to be appointed³ any communication made to or by a recognised body in the course of its acting as such for a client⁴ is in any legal proceedings privileged from disclosure in like manner as if the body had at all material times been a solicitor acting for the client⁵.

As from a day to be appointed⁶ where a recognised body acts as such for a client, any communication, document, material or information is privileged from disclosure in like manner as if the recognised body had at all material times been a solicitor acting for the client⁷.

1 As to the meaning of 'recognised body' see PARA 687 note 3. As from a day to be appointed the Administration of Justice Act 1985 Sch 2 para 36 does not apply to a recognised body which holds a licence under the Legal Services Act 2007 Pt 5 (see PARA 1476 et seq): Administration of Justice Act 1985 Sch 2 para 36(4) (prospectively added by the Legal Services Act 2007 Sch 16 para 123(c)). However, during the relevant period, the Administration of Justice Act 1985 Sch 2 para 36(4) applies to a body which is recognised under the Administration of Justice Act 1985 s 9 and has one or more managers who are not legally qualified (within the meaning of s 9A (see PARA 690 note 11)) as if the body were a licensed body: Legal Services Act 2007 Sch 22 para 17(1), (4), (6). This applies whether or not the legal professional privilege provisions have been brought into force for other purposes: Sch 22 para 17(2). The relevant period is the period which begins when the Administration of Justice Act 1985 s 9A comes into force and ends when Sch 5 para 7 ceases to apply in relation to the body: Legal Services Act 2007 Sch 22 para 17(3). At the date at which this volume states the law no such days had been appointed.

2 Administration of Justice Act 1985 Sch 2 para 36(2).

3 As from a day to be appointed the Administration of Justice Act 1985 Sch 2 para 36(1) is substituted by the Legal Services Act 2007 Sch 16 para 123(a). At the date at which this volume states the law no such day had been appointed.

4 As to the meaning of 'client' see the Solicitors Act 1974 s 87(1); and PARA 835 note 6 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(5)).

5 Administration of Justice Act 1985 Sch 2 para 36(1). In the Income and Corporation Taxes Act s 778(3) and Sch 15 para 14(5) and the Income Tax Act 2007 ss 749, 771(5), (6), 788(5), (6) any reference to a solicitor's client is in relation to a solicitor who is an officer or employee or a recognised body to be construed as a reference to a client of that body: Administration of Justice Act 1985 Sch 2 para 36(3) (amended by the Income and Corporation Taxes Act 1988 Sch 29 para 30 and the Income Tax Act 2007 Sch 1 para 272(a)). As from a day to be appointed the words 'a manager' are substituted for the words 'an officer' by the Legal Services Act 2007 Sch 16 para 123(b). At the date at which this volume states the law no such day had been appointed.

6 See note 3.

7 Administration of Justice Act 1985 Sch 2 para 36(1) (as prospectively substituted: see note 3).

UPDATE

704-719 Accounts rules; disclosure of information etc ... Privilege from disclosure

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(vi) Separate Businesses/720. Generally.

(vi) Separate Businesses

720. Generally.

The Solicitors' Code of Conduct 2007¹ regulates the services which may be provided by a business which is not regulated by the Solicitors Regulation Authority (a 'separate business') in order to ensure that members of the public are not confused or misled into believing that a business carried on by a solicitor or registered European lawyer² is regulated by the Authority when it is not³.

The relevant provisions of the Code apply to a solicitor or registered European lawyer⁴, or a registered foreign lawyer⁵ in a multi-national partnership⁶ or a director of a recognised body which is a company or a member of a recognised body which is a limited liability partnership⁷, regardless of whether the separate business is in England and Wales or outside the jurisdiction⁸.

1 As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq.

2 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

3 Solicitors' Code of Conduct 2007 r 21, introduction.

4 This includes an in-house solicitor or in-house registered European lawyer: see the Solicitors' Code of Conduct 2007 r 21.01(4).

5 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

6 As the meaning of 'multi-national partnership' see the Courts and Legal Services Act 1990 s 89(9); and PARA 724 note 3 (definition applied by the Solicitors' Code of Conduct 2007 r 24.01).

7 Ie one incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq).

8 See the Solicitors' Code of Conduct 2007 r 21.01(1), (2). Rule 21 or similar provisions apply to a separate business carried on overseas: see r 15.21. Rule 21 also applies where an interest is held in another body corporate which is not a recognised body: r 21.01(3).

UPDATE

720-723 Separate businesses

Solicitors' Code of Conduct 2007 r 21 amended, and definition of 'multi-national partnership' in r 24.01 repealed, on 31 March 2009.

720 Generally

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(vi) Separate Businesses/721. Services which may not be provided through a separate business.

721. Services which may not be provided through a separate business.

Except in certain circumstances¹, the following services must not be provided through a separate business²:

- 888 (1) the conduct of any matter which could come before a court, tribunal or inquiry, whether or not proceedings are started³;
- 889 (2) advocacy before a court, tribunal or inquiry⁴;
- 890 (3) instructing counsel in any part of the United Kingdom⁵;
- 891 (4) immigration advice or immigration services⁶;
- 892 (5) any activity in relation to conveyancing, applications for probate or letters of administration, or drawing trust deeds or court documents, which is reserved to solicitors and others under the Solicitors Act 1974⁷;
- 893 (6) drafting wills⁸;
- 894 (7) acting as nominee, trustee or executor in England and Wales⁹;
- 895 (8) legal advice not included above¹⁰; or
- 896 (9) drafting legal documents not included in heads (1) to (8) above¹¹.

1 As to the exceptions see the Solicitors' Code of Conduct 2007 r 21.02(2). However the provisions relating to safeguards in r 21.05 will still apply: see r 21.02(2).

2 As to the meaning of 'separate business' see PARA 720.

3 Solicitors' Code of Conduct 2007 r 21.02(1)(a).

4 Solicitors' Code of Conduct 2007 r 21.02(1)(b).

5 Solicitors' Code of Conduct 2007 r 21.02(1)(c).

6 Solicitors' Code of Conduct 2007 r 21.02(1)(d).

7 Solicitors' Code of Conduct 2007 r 21.02(1)(e).

8 Solicitors' Code of Conduct 2007 r 21.02(1)(f).

9 Solicitors' Code of Conduct 2007 r 21.02(1)(g).

10 Solicitors' Code of Conduct 2007 r 21.02(1)(h).

11 Solicitors' Code of Conduct 2007 r 21.02(1)(i).

UPDATE

720-723 Separate businesses

Solicitors' Code of Conduct 2007 r 21 amended, and definition of 'multi-national partnership' in r 24.01 repealed, on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(vi) Separate Businesses/722. Services which may be provided in conjunction with a firm or in-house practice.

722. Services which may be provided in conjunction with a firm or in-house practice.

The following services extend beyond, or fall outside, the scope of a solicitor's practice¹ but may be provided in conjunction with a firm² or in-house practice³:

- 897 (1) practice as a qualified notary public⁴;
- 898 (2) educational activities⁵; and
- 899 (3) authorship, journalism or publishing⁶.

A service provided in conjunction with a firm or in-house practice of a solicitor, a registered European lawyer⁷, a multi-national partnership⁸ or a recognised body⁹ is not providing a separate business¹⁰.

1 As to the meaning of 'practice' see PARA 874 note 2.

2 As to the meaning of 'firm' see PARA 676 note 10.

3 As to the meaning of 'in-house practice' see PARA 676 note 15.

4 Solicitors' Code of Conduct 2007 r 21.03(1)(a).

5 Solicitors' Code of Conduct 2007 r 21.03(1)(b).

6 Solicitors' Code of Conduct 2007 r 21.03(1)(c).

7 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

8 As to the meaning of 'multi-national partnership' see the Courts and Legal Services Act 1990 s 89(9); and PARA 724 note 3 (definition applied by the Solicitors' Code of Conduct 2007 r 24.01).

9 As to the meaning of 'recognised body' see PARA 687 note 3.

10 Solicitors' Code of Conduct 2007 r 21.03(2). As to the meaning of 'separate business' see PARA 720.

UPDATE

720-723 Separate businesses

Solicitors' Code of Conduct 2007 r 21 amended, and definition of 'multi-national partnership' in r 24.01 repealed, on 31 March 2009.

722 Services which may be provided in conjunction with a firm or in-house practice

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(vi) Separate Businesses/723. Services which may be provided through a separate business.

723. Services which may be provided through a separate business.

The following services may be provided either through a firm¹ or in-house practice² or through a separate business³:

- 900 (1) alternative dispute resolution⁴;
- 901 (2) financial services (except those that cannot form part of a solicitor's practice)⁵;
- 902 (3) estate agency⁶;
- 903 (4) management consultancy⁷;
- 904 (5) company secretarial services⁸;
- 905 (6) acting as a parliamentary agent⁹;
- 906 (7) acting as a trade mark agent, patent agent or European patent attorney¹⁰;
- 907 (8) practising as a lawyer of another jurisdiction¹¹;
- 908 (9) acting as a bailiff¹²;
- 909 (10) acting as nominee, trustee or executor outside England and Wales¹³; or
- 910 (11) providing any other business, advisory or agency service which could be provided¹⁴ (but is not included in the relevant provisions of the Solicitors' Code of Conduct 2007¹⁵) through a firm or in-house practice¹⁶.

1 As to the meaning of 'firm' see PARA 676 note 10.

2 As to the meaning of 'in-house practice' see PARA 676 note 15.

3 As to the meaning of 'separate business' see PARA 720. Any service provided in heads (1)-(11) in the text through a separate business must comply with the safeguards provided in the Solicitors' Code of Conduct r 21.05: r 21.04(2).

4 Solicitors' Code of Conduct r 21.04(1)(a).

5 Solicitors' Code of Conduct r 21.04(1)(b).

6 Solicitors' Code of Conduct r 21.04(1)(c).

7 Solicitors' Code of Conduct r 21.04(1)(d).

8 Solicitors' Code of Conduct r 21.04(1)(e).

9 Solicitors' Code of Conduct r 21.04(1)(f).

10 Solicitors' Code of Conduct r 21.04(1)(g).

11 Solicitors' Code of Conduct r 21.04(1)(h).

12 Solicitors' Code of Conduct r 21.04(1)(i).

13 Solicitors' Code of Conduct r 21.04(1)(j).

14 Subject to the Solicitors' Code of Conduct 2007 r 21.

15 Is not included in the Solicitors' Code of Conduct 2007 r 21.02 (see PARA 721).

16 Solicitors' Code of Conduct r 21.04(1)(k).

UPDATE

720-723 Separate businesses

Solicitors' Code of Conduct 2007 r 21 amended, and definition of 'multi-national partnership' in r 24.01 repealed, on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(3) BUSINESS ARRANGEMENTS/(vii) Multi-national Partnerships/724. In general.

(vii) Multi-national Partnerships

724. In general.

Solicitors can enter into partnership with registered foreign lawyers¹ to carry on practice in England and Wales². Such partnerships are known as 'multi-national partnerships'³ and are regulated by the Solicitors Regulation Authority⁴.

A foreign lawyer who wishes to be registered must apply to the Authority to go on the register⁵. Registered foreign lawyers are required to make special contribution to the Solicitors' Compensation Fund⁶. They are also subject to the disciplinary procedures of the Authority⁷.

The Lord Chancellor may by order provide that any specified enactment or instrument passed or made before 30 October 2007⁸ having effect in relation to solicitors is to have effect with respect to registered foreign lawyers as it has effect with respect to solicitors⁹ or he may provide that any such enactment or instrument is to have effect subject to such additions, omissions or modifications as he sees fit to specify¹⁰. The Lord Chancellor may also by order provide that any such specified enactment or instrument is to have effect, in its application in relation to recognised bodies whose officers¹¹ include one or more registered foreign lawyers, with such additions, omissions or modifications as he sees fit to specify¹².

1 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

2 See the Courts and Legal Services Act 1990 s 89, Sch 14; the Solicitors Code of Conduct 2007 r 12.03.

3 'Multi-national partnership' means a partnership whose members consist of one or more registered foreign lawyers and one or more solicitors: Courts and Legal Services Act 1990 s 89(9).

4 The powers to make rules under the Solicitors Act 1974 s 31 (professional practice, conduct and discipline) (see PARA 828); s 32 (accounts) (see PARAS 622, 835); s 34 (accountant's reports) (see PARA 847 et seq); s 36 (compensation fund) (see PARA 862 et seq); s 37 (professional indemnity) (see PARA 853); and the Administration of Justice Act 1985 s 9 (recognised bodies) (see PARA 687 et seq) are also exercisable in relation to foreign lawyers: Courts and Legal Services Act 1990 s 89(3). As from a day to be appointed s 89(3) is amended by the Legal Services Act 2007 Sch 16 para 125(a) and also applies to the Solicitors Act 1974 s 36A (prospectively added) (see PARAS 862, 864-865). At the date at which this volume states the law no such day had been appointed.

Subject to exceptions, any such power under the Courts and Legal Services Act 1990 s 89(3) may be exercised so as to:

124 (1) make different provision with respect to solicitors who enter into multi-national partnerships to the provision made with respect to other solicitors (s 89(4)(a));

125 (2) make different provision with respect to the management and control of recognised bodies by solicitors and registered foreign lawyers to the provision made with respect to the management and control of recognised bodies by solicitors (s 89(4)(b));

126 (3) make different provision with respect to registered foreign lawyers who are members of multi-national partnerships to the provision made with respect to solicitors (s 89(4)(c)); or

127 (4) make different provision with respect to officers of recognised bodies who are registered foreign lawyers to the provision made with respect to officers of recognised bodies who are solicitors (s 89(4)(d)).

As from a day to be appointed s 89(4) is amended and heads (1)-(4) above no longer apply. Instead, subject to exceptions, any such power may be exercised to make different provision with respect to registered foreign lawyers to the provision made with respect to solicitors: Courts and Legal Services Act 1990 s 89(4) (as prospectively amended by the Legal Services Act 2007 Sch 16 paras 124, 125(b)). The Solicitors Act 1974 s 85 applies to a person who is a registered foreign lawyer practising as a member of a multi-national partnership: see the Registered Foreign Lawyers Order 1991, SI 1991/2831. As from a day to be appointed rules and regulations made under the Courts and Legal Services Act 1990 s 89 or Sch 14 which are not regulatory arrangements are to be treated as such arrangements for the purposes of the Legal Services Act 2007: Courts and Legal Services Act 1990 s 89(8A) (prospectively added by the Legal Services Act 2007 Sch 16 para 125(i)). As to the meaning of 'regulatory arrangements' see the Legal Services Act 2007; and PARA 377. At the date at which this volume states the law no such days had been appointed.

5 See the Courts and Legal Services Act 1990 s 89(1), (2); and PARA 628.

6 See the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991.

7 See PARAS 725-726.

8 Ie the date on which the Legal Services Act 2007 was passed.

9 See the Courts and Legal Services Act 1990 s 89(5) (amended by the Legal Services Act 2007 Sch 16 para 124). The Courts and Legal Services Act 1990 s 89(5) is subject to the provisions of Sch 14 (see PARA 848 et seq): s 89(5). The provisions of s 89(5)-(7) apply in relation to the Access to Justice Act 1999 Sch 7 as if they were contained in an Act passed before 14 October 1991 (ie the date on which the Courts and Legal Services Act 1990 was passed): Access to Justice Act 1999 Sch 7 para 15.

10 See the Courts and Legal Services Act 1990 s 89(6).

11 As from a day to be appointed the word 'managers' is substituted for the word 'officers' by the Legal Services Act 2007 Sch 16 para 125(h). At the date at which this volume states the law no such day had been appointed.

12 See the Courts and Legal Services Act 1990 s 89(7). Section 89(7) is subject to the provisions of Sch 14: s 89(7).

UPDATE

724-726 Multi-national Partnerships

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

724 In general

NOTE 2--Solicitors' Code of Conduct 2007 r 12.03 amended on 31 March 2009.

NOTE 4--Day appointed in relation to Legal Services Act 2007 Sch 16 para 125(a), (b), (i) is 31 March 2009: SI 2009/503.

The provisions of the Solicitors Act 1974 s 11(2)-(4) (fee payable on issue of practising certificates) (see PARA 670); s 13(2), (3), (5)-(7) (appeals etc in connection with the issue of practising certificates) (see PARA 900); s 13A(9)-(12) (imposition of conditions while practising certificates are in force) (see PARA 899); s 13B (suspension of practising certificates where solicitors convicted of fraud or serious crime) (see PARA 903); s 16(3) (b), (4)-(7) (duration of suspension of practising certificates) (see PARA 904); s 32(4) (accounts rules and trust accounts rules) (see PARA 846); s 33A (inspection of practice bank accounts etc) (see PARA 845); s 34(9) (accountants' reports) (see PARA 851); s 44B(1), (2)(a), (c), (d), (3)-(9) (see PARA 888); s 44C(1)-(4) power to charge for costs of investigations) (see PARA 889); s 44D (disciplinary powers of the Society) (see PARA 896); s 44E(1)-(3), (4)(a)-(d), (f), (6)-(9) (appeals against disciplinary action under s 44D) (see PARA 896); s 47(1)(c) (jurisdiction and powers of Tribunal) (see PARA 907); s

68 (power of court to order solicitor to deliver bill, etc) (see PARA 966); s 83 (power of Society to inspect file of proceedings in bankruptcy of solicitor) (see PARA 625); s 84 (service of documents at solicitor's place of business) (see PARA 621); Sch 1 para 1(1) (c) (intervention in solicitor's practice) (see PARA 890) have effect with respect to registered foreign lawyers as they have effect with respect to solicitors, subject to the modifications specified in the Registered Foreign Lawyers Order 2009, SI 2009/1589 (which replaces SI 1991/2831), Schedule: art 3.

The Solicitors Act 1974 s 34(10) (accountants' reports: no contravention of duty when making a report to the Society) (see PARA 851); s 41 (employment by solicitor of person struck off or suspended) (see PARA 924); s 42 (failure to disclose fact of having been struck off or suspended) (see PARA 925); s 44BA (power to require explanation of document or information) (see PARA 888); and s 44BC (information offences) (see PARA 888) have effect with respect to registered foreign lawyers subject to specified modifications: see SI 2009/1589 art 5.

The Administration of Justice Act 1985 Sch 2 para 9 (restriction on employment of person struck off roll or suspended) (see PARA 701); and Sch 2 para 10 (failure to disclose fact of having been struck off or suspended) (see PARA 702) have effect with respect to registered foreign lawyers subject to specified modifications: see SI 2009/1589 art 6.

NOTE 11--Day appointed is 31 March 2009: SI 2009/503.

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725. Powers of the Solicitors Disciplinary Tribunal with respect to registered foreign lawyers.

Any application:

- 911 (1) to strike the name of a foreign lawyer¹ off the register²;
- 912 (2) to require a registered foreign lawyer to answer allegations in an affidavit³;
- 913 (3) to suspend the registration of a foreign lawyer for a specified or indefinite period⁴;
- 914 (4) by a foreign lawyer whose name has been struck off the register by order of the Solicitors Disciplinary Tribunal to have his name restored to the register⁵;
- 915 (5) by a foreign lawyer whose registration has been suspended for an indefinite period by order of the Tribunal for the termination of that suspension⁶,

must be made to the Tribunal⁷.

Any person who alleges that a registered foreign lawyer has failed to comply with any rule of professional conduct⁸ may make a complaint to the Tribunal⁹.

On the hearing of any application or complaint with respect to a foreign lawyer, the Tribunal has power to make such order as it thinks fit, and any such order may in particular include provision for any of the following matters¹⁰:

- 916 (a) the striking off the register of the name of the foreign lawyer to whom the application or complaint relates¹¹;
- 917 (b) the suspension of that foreign lawyer's registration indefinitely or for a specified period¹²;
- 918 (c) the payment by him of a penalty¹³;
- 919 (d) the termination of his unspecified period of suspension from registration¹⁴;
- 920 (e) the restoration to the register of the name of a foreign lawyer which has been struck off¹⁵;
- 921 (f) the payment by any party of costs or a contribution towards costs of such amount as the Tribunal may consider reasonable¹⁶.

In the case of an order on an application under head (4) or (5) above, or the refusal of any such application, appeal lies to the Master of the Rolls¹⁷. In any other case, appeal lies to the High Court¹⁸. However as from a day to be appointed an appeal lies only to the High Court¹⁹.

1 As to the meaning of 'foreign lawyer' see PARA 628 note 2.

2 Courts and Legal Services Act 1990 s 89(8), Sch 14 para 15(2)(a). As to the register see PARA 627.

3 Courts and Legal Services Act 1990 Sch 14 para 15(2)(b). As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

4 Courts and Legal Services Act 1990 Sch 14 para 15(2)(c).

5 Courts and Legal Services Act 1990 Sch 14 para 15(2)(d).

6 Courts and Legal Services Act 1990 Sch 14 para 15(2)(e).

7 Courts and Legal Services Act 1990 s 89(8), Sch 14 para 15(2). The Solicitors Act 1974 s 46 (see PARA 906) applies, with the necessary modifications, in relation to applications and complaints made by virtue of any provision of the Courts and Legal Services Act 1990 Sch 14 as it applies in relation to applications and complaints made by virtue of any provision of the Solicitors Act 1974: Courts and Legal Services Act 1990 Sch 14 para 15(1). For these purposes, however, the Tribunal may make rules providing for it to be assisted, in dealing with any such application or complaint, by a member of the legal profession in the jurisdiction by reference to which the foreign lawyer is or was qualified to be registered: Sch 14 para 16(1). No such rules may be made without the concurrence of the Master of the Rolls: Sch 14 para 16(2). However Sch 14 para 16(2) is amended by the Legal Services Act 2007 Sch 16 para 137 as from a day to be appointed under s 211(2) and the words 'Legal Services Board' are substituted for the words 'Master of the Rolls'. At the date at which this volume states the law no such day had been appointed. The Solicitors Act 1974 s 46(12) (rules to be made by statutory instrument etc) applies to rules so made: see the Courts and Legal Services Act 1990 Sch 14 para 16(3). See the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 5; and PARA 908. As to the Legal Services Board see PARA 303.

8 In any rules made under the Solicitors Act 1974 s 31 (practice rules); s 32 (accounts rules); s 34 (accountant's report rules: see PARA 847 et seq); or s 37 (professional indemnity rules). As to the application of these rules to registered foreign lawyers see PARA 724 note 4.

9 Courts and Legal Services Act 1990 Sch 14 para 15(3). As from a day to be appointed any person who alleges that a registered foreign lawyer has knowingly acted in contravention of any order under the Solicitors Act 1974 s 43(2) (see PARA 927) or of any conditions subject to which a permission has been granted under such an order may make a complaint to the Tribunal: Courts and Legal Services Act 1990 Sch 14 para 15(3A) (prospectively added by the Legal Services Act 2007 Sch 16 para 136(a)). At the date at which this volume states the law no such day had been appointed.

10 Courts and Legal Services Act 1990 Sch 14 para 15(4).

11 Courts and Legal Services Act 1990 Sch 14 para 15(4)(a).

12 Courts and Legal Services Act 1990 Sch 14 para 15(4)(b).

13 Courts and Legal Services Act 1990 Sch 14 para 15(4)(c). The penalty is forfeit to Her Majesty: Courts and Legal Services Act 1990 Sch 14 para 15(4)(c). Until a day to be appointed the penalty must not exceed £5,000 and any order made under the Solicitors Act 1974 s 47(4) (see PARA 909) varying the maximum amount of the penalty which may be imposed under s 47(2)(c) may make the same variation in the corresponding amount mentioned in the Courts and Legal Services Act 1990 Sch 14 para 15(4)(c): see Sch 14 para 15(4)(c), (5) (Sch 14 para 15(4)(c) prospectively amended and Sch 14 para 15(5) prospectively repealed by the Legal Services Act 2007 Sch 16 para 136(b), (c), Sch 23). At the date at which this volume states the law no such day had been appointed and no relevant order had been made.

14 Courts and Legal Services Act 1990 Sch 14 para 15(4)(d).

15 Courts and Legal Services Act 1990 Sch 14 para 15(4)(e).

16 Courts and Legal Services Act 1990 Sch 14 para 15(4)(f).

17 Courts and Legal Services Act 1990 Sch 14 para 17(1)(a). Any decision of the Master of the Rolls on such an appeal is final: Sch 14 para 17(3). The Master of the Rolls may make regulations about appeals to him under Sch 14 para 17: Sch 14 para 17(4).

18 Courts and Legal Services Act 1990 Sch 14 para 17(1)(b). The High Court and the Master of the Rolls have power to make such order on an appeal as they may think fit: Sch 14 para 17(2).

19 See the Courts and Legal Services Act 1990 Sch 14 para 17 (amended by the Legal Services Act 2007 Sch 16 para 138, Sch 23).

UPDATE

724-726 Multi-national Partnerships

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

725 Powers of the Solicitors Disciplinary Tribunal with respect to registered foreign lawyers

NOTE 7--Day appointed is 1 January 2010: SI 2009/3250.

NOTES 9, 13--Day appointed is 31 March 2009: SI 2009/503.

TEXT AND NOTE 19--Day appointed is 1 July 2009: SI 2009/1625.

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726. Intervention by the Solicitors Regulation Authority.

The powers exercisable on intervention by the Solicitors Regulation Authority in relation to a solicitor and his practice¹ are also exercisable in relation to a person who is or has been a registered foreign lawyer² and the practice or the multi-national partnership³ of which he is or was a member where:

- 922 (1) the Authority has reason to suspect dishonesty on the part of the registered foreign lawyer, or on the part of an employee of the multi-national partnership, in connection with the practice of that partnership or any trust of which the registered foreign lawyer is or was a trustee by virtue of his being a member of that partnership⁴;
- 923 (2) in the case of a registered foreign lawyer who has died, the Authority has reason to suspect dishonesty on the part of his personal representative in connection with the practice of the multi-national partnership or any trust of which the registered foreign lawyer was a trustee by virtue of his being a member of that partnership⁵;
- 924 (3) the Authority is satisfied that the registered foreign lawyer has failed to comply with accounts⁶ or indemnity⁷ rules⁸;
- 925 (4) a bankruptcy order⁹ has been made against him or he has made a composition or arrangement with his creditors¹⁰;
- 926 (5) he has been committed to prison in any civil or criminal proceedings¹¹;
- 927 (6) he lacks capacity¹² and powers under the mental health legislation¹³ have been exercised in respect of him¹⁴;
- 928 (7) his name has been struck off the register¹⁵ or his registration has been suspended or cancelled¹⁶;
- 929 (8) he has purported to act as a member of a multi-national partnership at a time when he was not registered¹⁷;
- 930 (9) the Authority is satisfied that he has failed to comply with any condition subject to which he is registered¹⁸;
- 931 (10) a complaint is made to the Authority¹⁹ that there has been undue delay on the part of a registered foreign lawyer in connection with any matter in which he, or the multi-national partnership of which he is or was a member, was instructed on behalf of a client or with any controlled trust²⁰, the Authority by notice in writing invites him to give an explanation within a period specified in the notice²¹ and he fails within that period to give an explanation which the Authority regards as satisfactory²².

Where the powers of intervention are exercisable in relation to a registered foreign lawyer in accordance with heads (1) to (10) above, they continue to be so exercisable at any time when his registration is suspended, after his name has been struck off the register or his registration has been cancelled, or after his death²³.

As from a day to be appointed the Authority's powers of intervention also apply where:

- 932 (a) the Authority has reason to suspect dishonesty on the part of the registered foreign lawyer in connection with the business of any person of whom he is or was

- an employee, or of any body of which he is or was a manager or any business which is or was carried on by him as a sole trader²⁴;
- 933 (b) the Authority is satisfied that he has abandoned his practice²⁵;
- 934 (c) the Authority is satisfied that it is necessary to exercise the intervention powers (or any of them) in relation to the registered foreign lawyer to protect the interests of clients (or former or potential clients) of the registered foreign lawyer or the multi-national partnership or the interests of the beneficiaries of any trust of which the registered foreign lawyer is or was a trustee²⁶.

1 Ie the powers conferred by the Solicitors Act 1974 s 35, Sch 1 Pt II (paras 5-16) (see PARA 890 et seq): see the Courts and Legal Services Act 1990 s 89(4), (8), Sch 14 para 5(1). Subject to Sch 14 para 5(3), (4) (see heads (1)-(9) in the text), the intervention powers are exercisable as they are exercisable in relation to a solicitor and his practice: see Sch 14 para 5(2). The Solicitors Act 1974 Sch 1 Pt II has effect in relation to the intervention powers so exercisable subject to any express modifications made under the Courts and Legal Services Act 1990 s 89 (see PARA 724) and any modification necessary in the light of the Courts and Legal Services Act 1990 Sch 14 para 5: Sch 14 para 5(7). For these purposes, the Solicitors Act 1974 Sch 1 Pt II is to be read with Sch 1 para 4(2) (personal representatives: see PARA 890): Courts and Legal Services Act 1990 Sch 14 para 5(8). The Courts and Legal Services Act 1990 Sch 14 refers to the 'Council' (ie the Council of the Law Society) and is prospectively amended by the Legal Services Act 2007 Sch 16 para 130 to refer to the 'Society' (ie the Law Society). However in practice the body responsible is the Solicitors Regulation Authority (see PARA 619).

2 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

3 As to the meaning of 'multi-national partnership' see PARA 724 note 3.

4 Courts and Legal Services Act 1990 Sch 14 para 5(3)(a) (prospectively amended: see note 1). The words 'by virtue of his being a member of that partnership' are repealed by the Legal Services Act 2007 Sch 16 para 131(a)(ii), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

5 Courts and Legal Services Act 1990 Sch 14 para 5(3)(b) (prospectively amended: see note 1). The words 'by virtue of his being a member of that partnership' are repealed by the Legal Services Act 2007 Sch 16 para 131(a)(ii), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

6 Ie rules made under the Solicitors Act 1974 s 32.

7 Ie rules made under the Solicitors Act 1974 s 37(2)(c); see PARA 853.

8 Courts and Legal Services Act 1990 Sch 14 para 5(3)(c) (prospectively amended: see note 1). However, until a day to be appointed, the powers of intervention are only exercisable by virtue of Sch 14 para 5(3)(c) if the Authority has given the foreign lawyer notice in writing that it is satisfied that he has failed to comply with the rules specified in the notice and that those powers are accordingly exercisable: Sch 14 para 5(4) (prospectively repealed by the Legal Services Act 2007 Sch 16 para 131(g)). The notices need not be given at the same time: Sch 14 para 5(9).

9 Ie as defined in the Courts and Legal Services Act 1990 Sch 14 para 10(3): see PARA 628.

10 Courts and Legal Services Act 1990 Sch 14 para 5(3)(d).

11 Courts and Legal Services Act 1990 Sch 14 para 5(3)(e).

12 As to the meaning of 'lacks capacity' see the Mental Capacity Act 2005; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.

13 Ie under the Mental Capacity Act 2005 ss 15-20 or s 48: see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 751, 756-760.

14 Courts and Legal Services Act 1990 Sch 14 para 5(3)(f) (substituted by the Mental Capacity Act 2005 Sch 6 para 35(3)).

15 As to the register see PARA 661 et seq.

16 Courts and Legal Services Act 1990 Sch 14 para 5(3)(g).

17 Courts and Legal Services Act 1990 Sch 14 para 5(3)(h).

18 Courts and Legal Services Act 1990 Sch 14 para 5(3)(a)-(i) (as prospectively amended: see note 1). The condition mentioned in head (9) in the text may be to the effect that:

128 (1) he may only be a member of a partnership which is approved by the Authority; or

129 (2) he may only be an officer of a recognised body which is so approved; or

130 (3) he may only be such a member or such an officer: Sch 14 para 5(3)(i).

As from a day to be appointed the words 'a manager' are substituted for the words 'an officer' by the Legal Services Act 2007 Sch 16 para 131(e)(ii). At the date at which this volume states the law no such day had been appointed.

As to the meaning of 'recognised body' see PARA 687 note 3; and as to the meaning of 'officer' see PARA 708 note 9.

19 As from a day to be appointed the words 'the Authority is satisfied' are substituted for the words 'a complaint is made to the Authority': see the Courts and Legal Services Act 1990 Sch 14 para 5(5)(a) (prospectively amended by the Legal Services Act 2007 Sch 16 para 131(h)). At the date at which this volume states the law no such day had been appointed.

20 'Controlled trust' means, in relation to a registered foreign lawyer who is a member of a multi-national partnership, a trust of which he is a sole trustee or co-trustee only with one or more of the employees or other partners of that partnership and of which he is a trustee by virtue of his being a member of that partnership: Courts and Legal Services Act 1990 Sch 14 para 1. However as from a day to be appointed the word 'trust' is substituted for the words 'controlled trust': see the Sch 14 para 5(5) (prospectively amended by Legal Services Act 2007 Sch 16 para 131(i)). At the date at which this volume states the law no such day had been appointed.

21 The period must not be less than eight days: Courts and Legal Services Act 1990 Sch 14 para 5(5)(b).

22 Courts and Legal Services Act 1990 Sch 14 para 5(5)(a)-(c), (9). The Authority must give notice of the failure to the registered foreign lawyer and notice that the intervention powers are accordingly exercisable: Sch 14 para 5(5)(d). The notices need not be given at the same time: Sch 14 para 5(9). The powers conferred by the Solicitors Act 1974 Sch 1 para 5 (see PARA 892) or Sch 1 para 10 (see PARA 893) are not, however, exercisable in such a case: Courts and Legal Services Act 1990 Sch 14 para 5(5).

23 Courts and Legal Services Act 1990 Sch 14 para 5(6).

24 Courts and Legal Services Act 1990 Sch 14 para 5(3)(ba) (prospectively added by the Legal Services Act 2007 Sch 16 para 131(b)).

25 Courts and Legal Services Act 1990 Sch 14 para 5(3)(ea) (prospectively added by the Legal Services Act 2007 Sch 16 para 131(d)).

26 Courts and Legal Services Act 1990 Sch 14 para 5(3)(j) (prospectively added by the Legal Services Act 2007 Sch 16 para 131(f)).

UPDATE

724-726 Multi-national Partnerships

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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(viii) Alternative Business Structures

727. Generally.

As from a day to be appointed¹ the Legal Services Act 2007 enables a licensable body² to be licensed to carry on a reserved legal activity³ by a licensing authority⁴.

1 The Legal Services Act 2007 ss 13, 18, 71, 109 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensable bodies' see PARA 1477.

3 As to the meaning of 'reserved legal activity' see PARA 512. As to applications for a licence see PARA 1515 et seq.

4 See the Legal Services Act 2007 Pt 5; and PARA 1476 et seq. As to the meaning of 'licensing authority' see PARA 1478.

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(4) LEGAL RIGHTS AND DUTIES

(i) Legal Rights

A. IN GENERAL

728. Right to carry out certain legal activities.

Until a day to be appointed¹ the right to carry out certain legal activities² is governed by provisions of the Courts and Legal Services Act 1990³. A person's right of audience and the right to conduct litigation mainly arise where he has been granted that right by the appropriately authorised body⁴. It is an offence to act in the purported exercise of such a right when not entitled to do so⁵.

As from a day to be appointed⁶, the right to carry out certain legal services is mainly governed by provisions of the Legal Services Act 2007⁷. It is an offence for a person to carry on an activity (the 'relevant activity') which is a reserved legal activity⁸ unless that person is entitled to carry on the relevant activity⁹ and whether a person is entitled to carry on that activity is to be determined solely in accordance with provisions of the Legal Services Act 2007¹⁰.

1 The Courts and Legal Services Act 1990 ss 27-31A are repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(d), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie the right of audience and the right to conduct litigation. As to the meanings of 'right to conduct litigation' and the 'right of audience' see PARA 495 notes 3, 4.

3 Ie the Courts and Legal Services Act 1990 ss 27-31A (see PARA 495 et seq).

4 See the Courts and Legal Services Act 1990 ss 27, 28; and PARAS 497, 498. As to the designation of authorised bodies see Sch 4; and PARA 329 et seq. In practice the body responsible for the granting of such rights in relation to solicitors is the Solicitors Regulation Authority: see PARA 619.

5 See the Courts and Legal Services Act 1990 s 70; and PARAS 584-586.

6 The Legal Services Act 2007 Pt 3 (ss 12-26) is mainly to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. As to the Lord Chancellor see PARA 301 note 1.

7 See PARA 509 et seq. Provision is made for the continuity of existing rights: see the Legal Services Act 2007 Sch 5 paras 1, 2; and PARA 515.

8 As to the meaning of 'reserved legal activity' see PARA 512.

9 See the Legal Services Act 2007 s 14(1); and PARA 586.

10 See the Legal Services Act 2007 s 13(1); and PARA 509 et seq.

UPDATE

728-729 Right to carry out certain legal activities, The courts

Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

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B. RIGHT TO PRACTISE

729. The courts.

Until a day to be appointed the following provisions have effect¹. Any person admitted as a solicitor whose name is for the time being on the roll² and who has in force³ a practising certificate⁴ is entitled to practise⁵:

- 935 (1) in the Supreme Court⁶, which includes the Court of Appeal, the High Court of Justice and the Crown Court⁷;
- 936 (2) in all courts and before all persons having jurisdiction in ecclesiastical matters⁸;
- 937 (3) in all matters relating to applications to obtain notarial faculties⁹; and
- 938 (4) in any county court¹⁰.

Nothing in heads (3) to (6) above prejudices or affects any right of practising or being heard in, before or by any court, tribunal or other body which immediately before 1 May 1975¹¹ was enjoyed by virtue of any enactment, rule, order or regulation or by custom or otherwise by persons qualified to act as solicitors¹².

If practising in London, a solicitor is also entitled to practise in the Privy Council on signing a declaration without fee¹³.

1 The Solicitors Act 1974 s 19 is repealed by the Legal Services Act 2007 Sch 16 paras 1, 24, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the roll see PARA 621.

3 A practising certificate is deemed for the purposes of the Solicitors Act 1974 not to be in force while it is suspended: see PARA 901. As to the requirement for a practising certificate see PARA 667 et seq.

4 As to applications for and the issue of practising certificates see PARA 669 et seq.

5 See the Solicitors Act 1974 s 1; and PARA 635.

6 Solicitors Act 1974 s 19(1)(a) (prospectively amended (see note 7); and prospectively repealed (see note 1)).

7 Supreme Court Act 1981 s 1(1); cf **COURTS** vol 10 (Reissue) PARA 601 et seq. As from a day to be appointed, the Supreme Court and the Supreme Court Act 1981 are renamed the Senior Courts and the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1; and **COURTS**. Accordingly as from a day to be appointed the Solicitors Act 1984 s 19 is amended by the Constitutional Reform Act 2005 Sch 11 para 21(1), (3) (a) to read the Senior Courts. At the date at which this volume states the law no such day had been appointed.

8 Solicitors Act 1974 s 19(1)(c) (prospectively repealed: see note 1). A solicitor so qualified is also entitled to all the rights and privileges and may exercise and perform all the powers and duties formerly appertaining to the office or profession of a proctor in the provincial, diocesan or other jurisdictions in England and Wales: s 19(1). For an account of the ecclesiastical courts see **ECCELESIASTICAL LAW** vol 14 PARA 1272 et seq.

9 Solicitors Act 1974 s 19(1)(d) (prospectively repealed: see note 1).

10 Solicitors Act 1974 s 19(1)(b) (prospectively repealed: see note 1). See generally **COURTS**.

11 In the commencement of the Solicitors Act 1974: see s 90(2); and the Solicitors Acts 1974 (Commencement) Order 1975, SI 1975/534.

12 Solicitors Act 1974 s 19(3) (prospectively repealed: see note 1). Also, nothing in s 19(1) (see heads (1)-(4) in the text) affects the provisions of the County Courts Act 1984 s 13 (see **COURTS** vol 10 (Reissue) PARA 734) or any other enactment in force on 1 May 1975 which restricts the right of any solicitor to practise as such in any court: Solicitors Act 1974 s 19(2) (amended by the Supreme Court Act 1981 s 152(1), Sch 5; and by the County Courts Act 1984 s 148(1), Sch 2 Pt V). The Solicitors Act 1974 s 19(2) (as so amended) also refers to the provisions of the Supreme Court Act 1981 s 94 (now repealed) and the County Courts Act 1984 s 60 (the relevant restrictions in which were contained in s 60(1), repealed by the Courts and Legal Services Act 1990 s 125(7), Sch 20).

13 Order in Council dated 6 March 1896, Schedule r 2. Solicitors, other than those practising in London, may be admitted to practise in the Privy Council for such periods and under such conditions as the Judicial Committee may by order direct: Schedule r 3. See **COURTS** vol 10 (Reissue) PARA 417.

UPDATE

728-729 Right to carry out certain legal activities, The courts

Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

729 The courts

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 7--Appointed day is 1 October 2009: SI 2009/1604.

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730. Enforcement of rights.

The right to practise in inferior courts, including the county courts, may be enforced by a mandatory order¹. Such an order must be sought on an application to the High Court for a judicial review².

1 *R v London Corpn* (1847) 13 QB 1 (subsequent proceedings (1848) 13 QB 30, Ex Ch); Supreme Court Act 1981 s 29(4) (amended by SI 2004/1033). As to mandatory orders generally see **JUDICIAL REVIEW** vol 61 (2010) PARA 703 et seq.

2 Supreme Court Act 1981 s 31(1)(a) (substituted by SI 2004/1033); and see **CIVIL PROCEDURE** vol 12 (2009) PARA 1530.

UPDATE

730 Enforcement of rights

NOTES--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

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731. Restrictions on the right to practise.

It is not lawful for any solicitor who is one of the justices of the peace assigned to any local justice area, or for any partner of his¹, to act in connection with any proceedings before any justice of the peace acting in that area as solicitor or agent for a solicitor of any person concerned in those proceedings². This does not apply where a solicitor is a Deputy District Judge (Magistrates' Courts)³. However where a solicitor is acting as a Deputy District Judge (Magistrates' Courts) in any local justice area it is not lawful for him, or for any partner of his, to act in connection with proceedings before any justice of the peace acting in that area as solicitor or agent for the solicitor of any person concerned in those proceedings⁴.

A person holding as a full-time appointment any of certain judicial offices may not practise as a solicitor or be indirectly concerned in any such practice⁵.

Until a day to be appointed a solicitor, while a prisoner in any prison, must not as a solicitor, in his own name or in the name of any other solicitor, issue any writ or process, or commence, prosecute or defend any action or any matter in bankruptcy⁶.

1 For these purposes, references to any partner of a solicitor are to be construed, in relation to a solicitor who is an officer of a recognised body, as references to any other solicitor who is an officer of that body: Administration of Justice Act 1985 Sch 2 para 7. As to the meaning of 'recognised body' see PARA 687 note 3. As from a day to be appointed the words 'a manager' in Sch 2 para 7 are substituted for the words 'an officer' by the Legal Services Act 2007 Sch 16 paras 80, 95. At the date at which this volume states the law no such day had been appointed.

2 Solicitors Act 1974 s 38(1) (amended by the Courts Act 2003 Sch 8 para 176(1), (2)).

3 Solicitors Act 1974 s 38(3A) (added by the Access to Justice Act 1999 Sch 11 para 23).

4 Solicitors Act 1974 s 38(3A) (as added (see note 3); amended by the Court Act 2003 Sch 8, para 176(1), (4)).

5 See the Courts and Legal Services Act 1990 s 75; and PARA 582.

6 Solicitors Act 1974 s 40(1) (prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 40, Sch 23). If any solicitor commences, prosecutes or defends any action or any matter in bankruptcy in contravention of this provision, he is incapable of maintaining an action for the recovery of any costs in respect of any business so done by him; and he and any other solicitor in whose name he is permitted to commence, prosecute or defend the action or matter are guilty of contempt of the court in which it is commenced, prosecuted or defended and may be punished accordingly: s 40(2) (so prospectively repealed).

UPDATE

731 Restrictions on the right to practise

NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

NOTE 6--Repeal in force 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(i) Legal Rights/C. RIGHTS OF AUDIENCE/732. Right of audience.

C. RIGHTS OF AUDIENCE

732. Right of audience.

Until a day to be appointed, the following provisions have effect¹. Every solicitor² is deemed to have been granted the right of audience³ before every court⁴ in relation to all proceedings⁵.

As from a day to be appointed⁶ the right of audience is a reserved legal activity for the purposes of the Legal Services Act 2007⁷ and a person may be authorised to carry on such an activity by the Solicitors Regulation Authority⁸. However, during a transitional period⁹ every qualified solicitor, every legal partnership¹⁰ and every recognised body¹¹ is deemed to be authorised by the Authority¹² to carry on the exercise of a right of audience before every court in relation to all proceedings¹³.

1 The Courts and Legal Services Act 1990 s 31 (substituted by the Access to Justice Act 1999 s 36) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(g), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'solicitor' see PARA 600 note 1.

3 As to the meaning of 'right of audience' see PARA 495 note 3.

4 As to the meaning of 'court' see PARA 426 note 12.

5 Courts and Legal Services Act 1990 s 31(2)(b) (as substituted; prospectively repealed: see note 1). This right is exercisable in accordance with the qualification regulations and rules of conduct of the Solicitors Regulation Authority approved for the purposes of the Courts and Legal Services Act 1990 s 27 (see PARA 497) in relation to the right: s 31(2)(a) (as substituted; prospectively repealed: see note 1). The Courts and Legal Services Act 1990 s 31 and the Legal Services Act 2007 refer to the Law Society, however, the body responsible for the regulation of solicitors is the Solicitors Regulation Authority: see PARA 619. As to the general grounds for determining the exercise of the right to audience see PARA 497. As to obtaining a qualification to enable a right of audience in a higher court see PARA 734.

6 The Legal Services Act 2007 s 12, Sch 5 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

7 See the Legal Services Act 2007 ss 12, 13; and PARAS 509, 512.

8 See the Legal Services Act 2007 s 13(2)(a), Sch 5 para 1; and PARA 515.

9 As to the meaning of 'transitional period' see PARA 516 note 9.

10 'Legal partnership' means a partnership in which a qualified solicitor, a registered European Lawyer or a body recognised under the Administration of Justice Act 1985 s 9 is permitted to practise by virtue of rules made under s 9 or the Solicitors Act 1974 s 31 (see PARA 828): Legal Services Act 2007 Sch 5 para 7(4). 'Registered European lawyer' means a registered European lawyer within the meaning of the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119 (see PARA 541 et seq) who is registered with the Solicitors Regulation Authority: Legal Services Act 2007 Sch 5 para 7(4).

11 Ie every body recognised under the Administration of Justice Act 1985 s 9 (see PARA 687 et seq).

12 See note 5.

13 Legal Services Act 2007 Sch 5 para 7(1), (2)(a). This is subject to the regulatory arrangements of the Authority: Sch 5 para 7(3). During the transitional period every registered European lawyer is also deemed to be authorised to carry on such an activity: see Sch 5 para 8. Solicitors and registered European lawyers also

continue to have the rights conferred on them under the Patents Act 1977 s 102A (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 640) during the transitional period: see the Legal Services Act 2007 Sch 5 para 9.

UPDATE

732 Right of audience

TEXT AND NOTES--Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(i) Legal Rights/C. RIGHTS OF AUDIENCE/733. Right to be represented.

733. Right to be represented.

There is a statutory right to be represented by a solicitor in various disciplinary proceedings, including those before:

- 939 (1) the Disciplinary Committee of the Royal College of Veterinary Surgeons¹;
- 940 (2) a fitness to practise committee of the Pharmaceutical Society of Great Britain²;
- 941 (3) a fitness to practise committee of the General Dental Council³;
- 942 (4) a fitness to practise committee of the General Optical Council⁴;
- 943 (5) a fitness to practise committee of the General Medical Council⁵;
- 944 (6) the Disciplinary Committee of the Hearing Aid Council⁶;
- 945 (7) the Conduct and Competence Committee of the Nursing and Midwifery Council⁷;
- 946 (8) the Health Committee and the Professional Conduct Committee of the General Osteopathic Council⁸;
- 947 (9) the Investigating Committee, the Professional Conduct Committee and the Health Committee of the General Chiropractic Council⁹;
- 948 (10) the Disciplinary Committee of the Farriers Registration Council¹⁰;
- 949 (11) the Professional Conduct Committee of the Architects Registration Board¹¹;
- 950 (12) the Financial Services and Markets Tribunal¹²;
- 951 (13) tribunals required to determine why an order should not be made prohibiting a person from doing estate agency work, and appeals therefrom¹³; and
- 952 (14) certain tribunals hearing charges of disciplinary offences alleged to have been committed by police officers, and appeals to police appeals tribunals¹⁴.

1 See the Veterinary Surgeons Act 1966 Sch 2 para 5(1)(c); the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680, art 24.3; and **ANIMALS** vol 2 (2008) PARA 957.

2 See the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, art 59(2)(c); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 928.

3 See the Dentists Act 1984 Sch 3 para 2(2)(c); the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663, Schedule r 52(1); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 467.

4 See the Opticians Act 1989 s 23C; the General Optical Council (Fitness to Practise Rules) Order of Council 2005, SI 2005/1475, Schedule r 20(2)(a); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 860.

5 See the Medical Act 1983 Sch 4 para 1(2)(d); the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, Schedule r 33; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 169.

6 See the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule, Hearing Aid Council Disciplinary Committee (Procedure) Rules 1991, r 16; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 877.

7 See the Nursing and Midwifery Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/1761, r 20(2); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 775.

8 See the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, Schedule r 40; the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 200/241, Schedule r 60; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 557, 570.

9 See the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, Schedule rr 5(1)(c), 7(4); the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, Schedule r 11; the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, Schedule r 11; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 631, 647, 657, 667.

10 See the Farriers Registration Council Disciplinary Committee (Procedure) Rules Approval Instrument 1976, SI 1976/700, Schedule r 16; and **ANIMALS** vol 2 (2008) PARA 863.

11 See the Architects Act 1997 s 14(5); and **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 239.

12 See the Financial Services and Markets Tribunal Rules 2001, SI 2001/2476, r 18; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 62.

13 See the Estate Agents Act 1979 s 5(1), Sch 2 para 4(1); the Estate Agents (Appeals) Regulations 1981, SI 1981/1518, reg 14(2)(a); and **AGENCY**.

14 See the Police Act 1996 s 84(2); the Police (Conduct) Regulations 2004, SI 2004/645, regs 17, 18, 23-25, 41; and **POLICE** vol 36(1) (2007 Reissue) PARAS 247, 260.

UPDATE

733 Right to be represented

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 7--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864. See reg 7.

NOTE 13--SI 1981/1518 revoked: SI 2009/1836.

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734. Right of audience in higher courts.

No solicitor or registered European lawyer is entitled to exercise any right of audience other than a right of audience of the type which solicitors had immediately before 7 December 1989 unless he holds a higher courts advocacy qualification¹ entitling him to exercise that right of audience².

The Solicitors Regulation Authority may grant one of the following qualifications to a solicitor or registered European lawyer who meets the necessary requirements:

- 953 (1) a Higher Courts (All Proceedings) Qualification which entitles the solicitor or registered European lawyer to exercise rights of audience in all proceedings in the higher courts;
- 954 (2) a Higher Courts (Civil Proceedings) Qualification which entitles the solicitor or registered European lawyer to exercise rights of audience in all civil proceedings in the higher courts including judicial review proceedings in any court arising from any civil cause;
- 955 (3) a Higher Courts (Criminal Proceedings) Qualification which entitles the solicitor or registered European lawyer to exercise rights of audience in all criminal proceedings in the higher courts and judicial review proceedings in any court arising from any criminal cause³.

Solicitors and registered European lawyers applying⁴ for one of the higher courts advocacy qualifications must demonstrate to the satisfaction of the Solicitors Regulation Authority:

- 956 (a) that they are competent to undertake advocacy in the proceedings in relation to which they have applied by satisfying the Authority that they have undertaken the necessary training, assessment and experience⁵; or
- 957 (b) that they have practised as lawyers for at least three years and have at least three years' appropriate experience of litigation in the higher courts of England and Wales⁶ and have undertaken any necessary assessment⁷; or
- 958 (c) that they have practised as lawyers for at least three years and that they have appropriate experience of the higher courts of England and Wales⁸ and are suitably experience and qualified⁹; or
- 959 (d) that they have appropriate qualifications¹⁰ and have undertaken any specified further step or steps¹¹.

Where a person has a right of audience authorised by one body and becomes a member of another body but continues to have a right of audience¹² heads (a) to (d) above do not apply¹³.

Upon application, a higher courts advocacy qualification in those proceedings in which they are seeking to exercise right of audience may be granted to former barristers¹⁴ who, unless the Solicitors Regulation Authority is satisfied that they have recent relevant advocacy experience, have undertaken such steps as the Authority may specify¹⁵.

A solicitor or registered European lawyer applying for a courts advocacy qualification who is aggrieved by the decision may ask for the decision to be reviewed and appeal to the Master of the Rolls¹⁶.

1 le a higher courts advocacy qualification under the Higher Rights of Audience Regulations 2000.

2 Higher Courts Qualification Regulations 2000 reg 2. The Solicitors Regulation Authority does have the power to waive any of the provisions of the Higher Courts Qualification Regulations 2000 and to revoke such a waiver: reg 14.

3 Higher Courts Qualification Regulations 2000 reg 3(1). This is subject always to the rules and principles of professional conduct applicable to solicitors and registered European lawyers: reg 3(1). Solicitors and registered European lawyers who have been granted the Higher Courts (All Proceedings) Qualification, the Higher Courts (Civil Proceedings) Qualification and the Higher Courts (Criminal Proceedings) Qualification under the Higher Courts Qualification Regulations 1992 and the Higher Courts Qualification Regulations 1998 are deemed to have been granted the equivalent qualification under the Higher Courts Qualification Regulations 2000 reg 3(1): reg 3(2). Any registered European lawyer who is granted any of the qualifications listed in reg 3(1) keeps that qualification upon being admitted as a solicitor: reg 11.

4 An application under these regulations must be made on the form prescribed by the Solicitors Regulation Authority for the purpose and must be accompanied by the appropriate fee fixed from time to time by the Authority: Higher Courts Qualification Regulations 2000 reg 12(1).

5 Higher Courts Qualification Regulations 2000 reg 4(1)(a). The Higher Courts (All Proceedings) Qualification may be granted to solicitors and to registered European lawyers who have successfully undertaken training and assessment in procedure, evidence and ethics applicable to the higher courts, as specified by the Solicitors Regulation Authority and successfully undertaken training and assessment in advocacy skills applicable to the higher courts, as specified by the Authority and had such experience of litigation and advocacy over a period of 12 months as the Authority specifies and which is evidenced in such a way as prescribed: reg 5(1). In the case of a solicitor, the training, assessment and up to six months of the experience set out in reg 5(1) may be undertaken before admission as a solicitor provided that it is undertaken after successful completion of the Legal Practice Course and the experience requirement is satisfied during a training contract or following admission as a solicitor and at least six months of the experience requirement takes place following admission, and the training, assessment and experience set out in reg 5(1) take place in the five years preceding the application: reg 5(2). Solicitors or registered European lawyers who have gained a higher courts advocacy qualification under regs 5-9 or who are exercising any right of audience in the higher courts by virtue of any exemption they have under reg 10 are subject to the continuing professional development requirements in the Training Regulations 1990 (see PARA 637 et seq): see the Higher Courts Qualification Regulations 2000 reg 13.

6 Or that they have three years' appropriate experience of litigation in a comparable jurisdiction or a jurisdiction listed in EC Council Directive 98/5 (OJ L77, 14.3.98, p 36), art 1 to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained.

7 Higher Courts Qualification Regulations 2000 reg 4(1)(b). A higher courts advocacy qualification in those proceedings in which they are seeking to exercise rights of audience may be granted to solicitors and to registered European lawyers who have practised as lawyers for at least three years and have satisfied the Solicitors Regulatory Authority that by reason of their experience (which must be at least three years) of litigation in the higher courts of England and Wales or of a comparable jurisdiction or of a jurisdiction listed in EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) art 1 they have acquired a sound understanding of the procedure, evidence and ethics applicable in those proceedings for which they seek to exercise rights of audience: Higher Courts Qualification Regulations 2000 reg 6(1)(a), (b). The solicitor or registered European lawyer must have complied with any steps or conditions specified by the Authority, including undertaking any training and must have passed the assessment in advocacy skills (within the timescale specified by the Authority, if any) applicable to those proceedings in which he is seeking rights of audience specified by the Authority: reg 6(1)(c), (d). In assessing an applicant's understanding of the procedure, evidence and ethics for the purposes of reg 6(1) regard must be had to the applicant's recent experience of litigation and advocacy, any relevant training courses undertaken and assessments passed by the applicant and any advocacy observed by the applicant: reg 6(2). Applications under reg 6 must be received by the Authority before 13 December 2008: reg 6(3).

8 Or that they have appropriate experience in a comparable jurisdiction or of a jurisdiction listed in EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) art 1.

9 Higher Courts Qualification Regulations 2000 reg 4(1)(c). A higher courts advocacy qualification in those proceedings in which they are seeking to exercise rights of audience may be granted to those who have practised as lawyers for at least three years and have satisfied the Solicitors Regulation Authority that they have advocacy or judicial experience in the higher courts of England and Wales or of a comparable jurisdiction or of a jurisdiction listed in EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) art 1 and are suitably experienced and qualified to exercise rights of audience before the higher courts in the proceedings in which the

qualification for which they have applied would entitle them to appear: Higher Courts Qualification Regulations 2000 reg 7(1). Solicitors or registered European lawyers who fail to satisfy the Authority in accordance with reg 7(1) may have their application considered under reg 6: reg 7(2). Applications under reg 7 must be received by the Authority before 31 December 2008: reg 7(3).

10 Before being granted a higher courts advocacy qualification applicants must provide at least one reference as to the nature and extent of their litigation and advocacy experience from those whose standing as a member of the judiciary, the court service or the legal profession would enable them to offer informed opinions and attend for interview if required to do so: Higher Courts Qualification Regulations 2000 reg 4(2).

11 See the Higher Courts Qualification Regulations 2000 reg 4(1)(d). A solicitor or registered European lawyer may apply for a qualification to exercise rights of audience in all proceedings in the higher courts relying on a qualification or qualifications gained in any comparable jurisdiction or a jurisdiction listed in EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) art 1: Higher Courts Qualification Regulations 2000 reg 8(1). Each application will be considered on its merits by the Solicitors Regulation Authority which may require the applicant to undertake such steps as it may specify in order to gain the qualification: reg 8(2).

12 If they do not apply where the Courts and Legal Services Act 1990 s 31C applies. With respect to his entitlement to exercise a right of audience before a court in proceedings of a particular description, a solicitor or registered European lawyer is exempt from the requirements of Higher Courts Qualification Regulations 2000 reg 2(3) if he is a person to whom, in respect of that court and that description of proceedings, the Courts and Legal Services Act 1990 s 31C applies and by virtue of that section he has a higher courts advocacy qualification in respect of that entitlement: Higher Courts Qualification Regulations 2000 reg 10.

13 See the Higher Courts Qualification Regulations 2000 reg 4(3).

14 If solicitors who were admitted, or registered European lawyers who were so registered, prior to the coming into force of the Courts and Legal Services Act 1990 s 31C (see PARA 508) and who, at the time of their admission or their initial registration, had at any time been barristers or European lawyers registered with the Bar Standards Board under the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119 (see PARA 541) who had, and were entitled to exercise, rights of audience in all courts and in all proceedings; and whose entitlement to exercise those rights of audience was not a provisional or a temporary one; and who were not banned from exercising any of those rights of audience as the result of disciplinary proceedings, unless, having been so banned, the ban was subsequently lifted: see the Higher Courts Qualification Regulations 2000 reg 9(1). The wording in the Higher Courts Qualification Regulations 2000 reg 9(1) refers to the General Council of the Bar. However in practice the body responsible for the regulation of barristers is the Bar Standards Board: see PARA 1049.

15 Higher Courts Qualification Regulations 2000 reg 9(2).

16 See the Higher Courts Qualification Regulations 2000 reg 12.

UPDATE

734 Right of audience in higher courts

TEXT AND NOTES--Higher Courts Qualification Regulations 2000 replaced by Solicitors' Higher Rights of Audience Regulations 2010.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(i) Legal Rights/D. RIGHT TO CONDUCT LITIGATION/735. Right to conduct litigation.

D. RIGHT TO CONDUCT LITIGATION

735. Right to conduct litigation.

Until a day to be appointed¹ every solicitor² is deemed to have been granted the right to conduct litigation³ in relation to every court and all proceedings⁴.

As from a day to be appointed⁵ the right to conduct litigation is a reserved legal activity for the purposes of the Legal Services Act 2007⁶ and a person may be authorised to carry on such activities by the Solicitors Regulation Authority⁷. However, during a transitional period⁸ every qualified solicitor, every legal partnership⁹ and every recognised body¹⁰ is deemed to be authorised by the Authority¹¹ to carry on the exercise of a right to conduct litigation before every court in relation to all proceedings¹².

1 The Courts and Legal Services Act 1990 s 31 (substituted by the Access to Justice Act 1999 s 36) is repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(g), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'solicitor' see PARA 600 note 1.

3 As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

4 Courts and Legal Services Act 1990 s 31(2)(b) (as substituted; prospectively repealed: see note 1). This right is exercisable in accordance with the qualification regulations rules of conduct of the Solicitors Regulation Authority approved for the purposes of s 28 (see PARA 498) in relation to the right.

5 The Legal Services Act 2007 ss 12, 13, Sch 5 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

6 See the Legal Services Act 2007 s 12; and PARA 512.

7 See the Legal Services Act 2007 s 13(2)(a), Sch 5 para 1; and PARA 515. The Legal Services Act 2007 refers to the Law Society. However the body responsible for the regulation of solicitors is the Solicitors Regulation Authority: see PARA 619.

8 As to the meaning of 'transitional period' see PARA 516 note 9.

9 As to the meaning of 'legal partnership' see PARA 732 note 10.

10 Ie every body recognised under the Administration of Justice Act 1985 s 9 (see PARA 687 et seq).

11 See note 7.

12 Legal Services Act 2007 Sch 5 para 7(1), (2)(b). This is subject to the regulatory arrangements of the Authority: Sch 5 para 7(3). During the transitional period every registered European lawyer is also deemed to be authorised to carry on such an activity: see Sch 5 para 8.

UPDATE

735 Right to conduct litigation

TEXT AND NOTES--Day appointed for purpose of these provisions is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(i) Legal Rights/E. RIGHT TO CARRY OUT RESERVED INSTRUMENT ACTIVITIES, PROBATE ACTIVITIES AND THE ADMINISTRATION OF OATHS/736. Administration of oaths.

E. RIGHT TO CARRY OUT RESERVED INSTRUMENT ACTIVITIES, PROBATE ACTIVITIES AND THE ADMINISTRATION OF OATHS

736. Administration of oaths.

Until a day to be appointed the following provisions have effect¹. Every solicitor who holds a practising certificate² which is in force has the powers conferred on a commissioner for oaths³, but he must not exercise those powers in a proceeding in which he is a solicitor to any of the parties or in which he is interested⁴. A solicitor before whom an oath or affidavit is taken or made must state in the jurat or attestation where and on what date the oath or affidavit is taken or made⁵. Any document containing such a statement and purporting to be sealed or signed by a solicitor is admissible in evidence without proof that he is a solicitor or that he holds a practising certificate which is in force⁶. Every solicitor who holds a practising certificate which is in force has the right to use the title Commissioner for Oaths⁷.

As from a day to be appointed⁸ the administration of oaths is a reserved legal activity for the purposes of the Legal Services Act 2007⁹ and a person may be authorised to carry on such activities by the Solicitors Regulation Authority¹⁰. However, during a transitional period¹¹ every qualified solicitor, every legal partnership¹² and every recognised body¹³ is deemed to be authorised by the Authority¹⁴ to carry on the administration of oaths¹⁵.

1 The Solicitors Act 1974 ss 81, 81A are repealed by the Legal Services Act 2007 Sch 16 paras 73, Sch 23 and the Courts and Legal Services Act 1990 s 113 is repealed by the Legal Services Act 2007 Sch 21 para 96, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such days had been appointed.

2 As to practising certificates see PARA 667 et seq.

3 Solicitors Act 1974 s 81(1). The powers referred to in s 81(1) are those under the Commissioners for Oaths Acts 1889 and 1891 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 1027) and the Stamp Duties Management Act 1891 s 24 (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1110). Every reference to a commissioner for oaths in any enactment or document includes a reference to a solicitor unless the context otherwise requires: s 81(1).

4 Solicitors Act 1974 s 81(2). See also the Solicitors' Code of Conduct 2007 r 10.03; and PARA 871.

5 Solicitors Act 1974 s 81(3). The Secretary of State may, with the concurrence of the Lord Chief Justice and the Master of the Rolls, by order prescribe the fees to be charged by commissioners and solicitors exercising the powers of commissioners for oaths by virtue of s 81 in respect of the administration of an oath and the taking of an affidavit (within the meaning of the Commissioners for Oaths Act 1889): Solicitors Act 1974 s 81A(1), (3) (added by the Supreme Court Act 1981 s 152(1), Sch 5; and amended by SI 2003/1887). Any such order must be made by statutory instrument and laid before Parliament after being made: Solicitors Act 1974 s 81A(2) (as so added). In the exercise of the power so conferred, the Lord Chancellor has made the Commissioners for Oaths (Fees) Order 1993, SI 1993/2297.

6 Solicitors Act 1974 s 81(4).

7 Courts and Legal Services Act 1990 s 113(10)(a).

8 The Legal Services Act 2007 ss 12, 13, Sch 5 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

9 See the Legal Services Act 2007 s 12; and PARA 512.

10 See the Legal Services Act 2007 s 13(2)(a), Sch 5 para 1; and PARA 515. The Legal Services Act 2007 refers to the Law Society. However the body responsible for the regulation of solicitors is the Solicitors Regulation Authority: see PARA 619.

11 As to the meaning of 'transitional period' see PARA 516 note 9.

12 As to the meaning of 'legal partnership' see PARA 732 note 10.

13 In every body recognised under the Administration of Justice Act 1985 s 9 (see PARA 687 et seq).

14 See note 10.

15 Legal Services Act 2007 Sch 5 para 7(1), (2)(e). This is subject to the regulatory arrangements of the Authority: Sch 5 para 7(3). During the transitional period every registered European lawyer is also deemed to be authorised to carry on such an activity: see Sch 5 para 8.

UPDATE

736 Administration of oaths

NOTE 2--Solicitors' Code of Conduct 2007 r 10.03 amended on 31 March 2009.

TEXT AND NOTES 1-7--Repeal of these provisions in force 31 March 2009: SI 2009/503.

TEXT AND NOTE 8--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(i) Legal Rights/E. RIGHT TO CARRY OUT RESERVED INSTRUMENT ACTIVITIES, PROBATE ACTIVITIES AND THE ADMINISTRATION OF OATHS/737. Probate and reserved instrument activities.

737. Probate and reserved instrument activities.

As from a day to be appointed¹ probate activities² and reserved instrument activities³ are reserved legal activities for the purposes of the Legal Services Act 2007⁴ and a person may be authorised to carry on such activities by the Solicitors Regulation Authority⁵. However, during a transitional period⁶ every qualified solicitor, every legal partnership⁷ and every recognised body⁸ is deemed to be authorised by the Authority⁹ to carry on such activities¹⁰.

1 The Legal Services Act 2007 ss 12, 13, Sch 5 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'probate activities' see PARA 512 note 6.

3 As to the meaning of 'reserved instrument activities' see PARA 512 note 5.

4 See the Legal Services Act 2007 s 12; and PARA 512.

5 See the Legal Services Act 2007 s 13(2)(a), Sch 5 para 1; and PARA 515. The Legal Services Act 2007 refers to the Law Society. However the body responsible for the regulation of solicitors is the Solicitors Regulation Authority: see PARA 619.

6 As to the meaning of 'transitional period' see PARA 516 note 9.

7 As to the meaning of 'legal partnership' see PARA 732 note 10.

8 Ie every body recognised under the Administration of Justice Act 1985 s 9 (see PARA 687 et seq).

9 See note 5.

10 Legal Services Act 2007 Sch 5 para 7(1), (2)(c), (d). This is subject to the regulatory arrangements of the Authority: Sch 5 para 7(3). During the transitional period every registered European lawyer is also deemed to be authorised to carry on such an activity: see Sch 5 para 8.

UPDATE

737 Probate and reserved instrument activities

TEXT AND NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(ii) Duties, Privileges and Immunities/738. Freedom from arrest.

(ii) Duties, Privileges and Immunities

738. Freedom from arrest.

A solicitor, but not a solicitor's clerk¹, while engaged in his professional duties in going to or coming from the place of trial on behalf of a client is privileged from arrest on civil process but not on criminal process or pursuant to a punitive² committal³. This privilege is the privilege of the court, not the privilege of the litigant, and the court, if it thinks proper, may have a litigant appearing before it arrested on a committal order⁴.

1 *Phillips v Pound* (1852) 7 Exch 881.

2 As to the meaning of 'punitive' see *Seldon v Wilde* [1911] 1 KB 701 at 707, CA.

3 See *Re Douglas* (1842) 3 QB 825; *Re Freston* (1883) 11 QBD 545, CA. See further **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 506.

4 See *Re Hunt* [1959] 2 QB 69 at 73, 76-77, [1959] 2 All ER 252 at 254, 256-257, CA, where the person claiming privilege was a litigant in person.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(ii) Duties, Privileges and Immunities/739. Protection from defamation actions.

739. Protection from defamation actions.

A solicitor acting as an advocate is not liable to an action for libel or slander in respect of words written or spoken by him in the course of a judicial hearing, however improper or even malicious his behaviour may have been, such words being absolutely privileged on grounds of public policy¹. The protection is not only from actions for defamation but from any action brought against a solicitor because of what was said or done at the hearing unless the action against the solicitor is brought in respect of an abuse of the process of the court². The absolute privilege from defamation actions covers everything that is done from the inception of the proceedings onwards and extends to all pleadings and other documents brought into existence for the purpose of proceedings and starting with the writ or other document which institutes the proceedings³.

Communications between solicitor and client with reference to matters upon which the client is seeking professional advice are absolutely privileged provided the conversation is fairly referable to the relationship of solicitor and client⁴. Where a communication is made by a solicitor in the course of his professional duties on his client's behalf, which, if made by the client, would have been protected by qualified privilege, a solicitor is entitled to a like protection⁵.

1 *Munster v Lamb* (1883) 11 QBD 588 at 599, CA; see **LIBEL AND SLANDER** vol 28 (Reissue) PARAS 97-99. See also *Hargreaves v Bretherton* [1959] 1 QB 45, [1958] 3 All ER 122; *Marrinan v Vibart* [1963] 1 QB 528, [1962] 3 All ER 380, CA; and cf *Rondel v Worsley* [1969] 1 AC 191, [1967] 3 All ER 993, HL.

2 *Roy v Prior* [1971] AC 470, [1970] 2 All ER 729, HL, where an action against a solicitor for maliciously procuring an arrest by evidence given ex parte was allowed to proceed.

3 *Lincoln v Daniels* [1962] 1 QB 237 at 257-258, [1961] 3 All ER 740 at 749, CA.

4 *More v Weaver* [1928] 2 KB 520, CA, where it was held that a communication between solicitor and client was absolutely privileged. However, this view did not find ready acceptance in *Minter v Priest* [1930] AC 558, HL. See further **LIBEL AND SLANDER** vol 28 (Reissue) PARA 99. A letter written by a solicitor acting for a defendant, but without his client's authority and in breach of his duty to his client, to the plaintiff's solicitor admitting the defendant's negligence has been held to have been written on a privileged occasion but in the circumstances to be defamatory: *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394, CA.

5 *Baker v Carrick* [1894] 1 QB 838, CA. See also *Regan v Taylor* [2000] EMLR 549, CA (statements made by a solicitor to the press attacking a person who had attacked his client are covered by qualified privilege notwithstanding that they had not been expressly authorised by the client).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(ii) Duties, Privileges and Immunities/740. Duty of confidentiality.

740. Duty of confidentiality.

A solicitor must keep the affairs of clients and former clients confidential except where disclosure is required or permitted by law or by the client (or former client)¹. Furthermore if a solicitor, or his firm, holds confidential information in relation to a client, or former client, he must not risk breaching confidentiality by acting, or continuing to act, for another client on a matter where that information might reasonably be expected to be material and that client has an interest adverse to the first-mentioned client or former client². However under particular circumstances a solicitor may act, or continue to act, in the circumstances otherwise so prohibited either with the informed consent of both clients³ or without such consent⁴.

A solicitor cannot be compelled to disclose communications, whether oral or written, passing directly or indirectly between him and his client, or between him and a person who is communicating with him professionally with a view to becoming his client, for the purpose of giving or receiving legal professional advice if they are legitimate communications in the sense that they are not made in furtherance of fraud or crime, and the privilege extends to information which a solicitor receives in a professional capacity from a third party and which is then conveyed to the client⁵. It is not necessary that legal proceedings should be contemplated⁶, but it is necessary that the solicitor should be consulted professionally and not merely as a friend having legal knowledge⁷. A communication made by a client to his solicitor for the purpose of being repeated to the other side is not privileged if the solicitor's authority to compromise a case is in question⁸. The effect of the privilege is that neither the client, nor the solicitor without his consent, can be compelled to disclose the communications in the course of legal proceedings⁹. The privilege is the client's, not the solicitor's, and accordingly the client may restrain the solicitor from making disclosure¹⁰ or may waive the privilege¹¹. Until the client has waived the privilege it is the solicitor's duty, if he is requested to make disclosure, to claim the privilege¹².

European Community law recognises the confidentiality of certain communications between lawyer and client; this protection is a corollary of the principles of the EC Treaty concerning freedom of establishment and freedom to provide services, and applies without distinction to any lawyer entitled to practise his profession in one of the member states¹³. The protection of written communications is subject to two conditions:

- 960 (1) that they are made for the purposes and in the interests of the client's rights of defence; and
- 961 (2) that they emanate from independent lawyers, that is to say, lawyers who are not bound to the client by a relationship of employment¹⁴.

This is in contrast to the position in English law where no distinction is made, as regards confidentiality of communications generally, between the independent legal adviser and the salaried legal adviser acting as such¹⁵.

1 Solicitors' Code of Conduct 2007 r 4.01. This duty always overrides the duty to disclose: r 4.02(a). The Board of the Solicitors Regulation does not have the power to waive any of r 4: r 4.06. Rule 4 also applies to an overseas practice: r 15.04.

2 Solicitors' Code of Conduct 2007 r 4.03.

3 See the Solicitors' Code of Conduct 2007 r 4.04.

4 See the Solicitors' Code of Conduct 2007 r 4.05. See also *Winters v Mishcon de Reya* [2008] EWHC 2419 (Ch), [2008] All ER (D) 123 (Oct).

5 *Lawrence v Campbell* (1859) 4 Drew 485; *O' Rourke v Darbishire* [1920] AC 581, HL (followed in *Butler v Board of Trade* [1971] Ch 680, [1970] 3 All ER 593); *Minter v Priest* [1930] AC 558 at 580-581, HL; *Re Sarah C Getty Trust* [1985] QB 956, [1985] 2 All ER 809; *Balabel v Air India* [1988] Ch 317, [1988] 2 All ER 246, CA (document need not specifically contain advice). Privilege may also be set aside by the court on the application of a solicitor who suspects fraud or crime by his client: *Finers (a firm) v Miro* [1991] 1 All ER 182, [1991] 1 WLR 35, CA. If a solicitor or clerk from whom legal advice is sought is a police informer this severely curtails the right to legal professional privilege: *R v Robinson* [2002] EWCA Crim 2489, [2003] Crim LR 284. However it is not a breach of legal professional privilege for a person's solicitor to give evidence as to the identity of that person at his trial; nor is a file note covered by privilege as it is not a communication between solicitor and client: *R (on the application of Howe) v South Durham Magistrates' Court* [2004] EWHC 362 (Admin), [2005] RTR 55, DC.

6 *Minet v Morgan* (1873) 8 Ch App 361.

7 See *Greenough v Gaskell* (1833) 1 My & K 98 at 104.

8 *Conlon v Conlons Ltd* [1952] 2 All ER 462, [1952] 2 TLR 343, CA.

9 This privilege is part of the law of evidence and is more fully discussed in **CIVIL PROCEDURE** vol 11 (2009) PARAS 558 et seq, 972. As to the extension of legal professional privilege to authorised advocates and litigators who are not barristers or solicitors see the Courts and Legal Services Act 1990 s 63 (prospectively repealed); and PARA 507.

10 *Beer v Ward* (1821) Jac 77; *Davies v Clough* (1837) 8 Sim 262; *Carter v Palmer* (1841) 8 Cl & Fin 657 at 707, HL; *Mellor v Thompson* (1885) 31 ChD 55, CA. See **CIVIL PROCEDURE** vol 11 (2009) PARA 356; and cf PARA 817. The client can insist that the solicitor keep matters confidential, even where the client could himself be compelled to disclose them: *Conoco (UK) Ltd v Commercial Law Practice* 1997 SLT 372, Outer House.

11 *Bate v Kinsey* (1834) 1 Cr M & R 38; *Minter v Priest* [1930] AC 558 at 579, HL, per Lord Atkin. There is no licence implied into a solicitor's retainer, for him to communicate a client's confidential information or the conclusions it leads him to, to a solicitor under a different retainer to the client: *Marsh v Sofaer* (2003) Times, 10 December, [2003] All ER (D) 93 (Dec).

12 See *Beer v Ward* (1821) Jac 77. See also Solicitors' Code of Conduct 2007 r 4.02(b)(ii).

13 Case 155/79 *AM & S Europe Ltd v EC Commission* [1982] ECR 1575, [1982] 2 CMLR 264, ECJ.

14 Case 155/79 *AM & S Europe Ltd v EC Commission* [1982] ECR 1575, [1982] 2 CMLR 264, ECJ, where it was decided that on an investigation into a company's trading practices by the EC Commission the principle of confidentiality between lawyer and client covered all written communications exchanged after the initiation of the administrative procedure and extended to earlier written communications related to the subject matter of that procedure; however, because the EC Commission has a prima facie right by virtue of EC Council Regulation 17/62 (OJ 13, 21.2.62, p 24) First Regulation implementing Articles 85 and 86 of the Treaty, art 14 to see written communications between lawyer and client it is still the Commission that decides whether such documents are protected but it does so on the basis of a description of the document and not on an examination of the whole of it.

15 *Alfred Crompton Amusement Machines Ltd v Customs and Excise Comrs (No 2)* [1972] 2 QB 102, [1972] 2 All ER 353, CA; affd on other grounds [1974] AC 405, [1973] 2 All ER 169, HL.

UPDATE

740 Duty of confidentiality

TEXT AND NOTES 1-4--Solicitors' Code of Conduct 2007 r 4 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(ii) Duties, Privileges and Immunities/741. Exceptions to the duty of confidentiality.

741. Exceptions to the duty of confidentiality.

A solicitor is required to make specific arrangements for the detection of transactions which might involve money laundering¹. This involves implementing management systems that will enable the detection of money laundering and terrorist funding activities by imposing a duty of customer due diligence². There are penalties for the solicitor if the systems are not in place within firms³. In addition a solicitor has a legal obligation to notify the police if he has reason to suspect his client of being involved in money laundering and in those circumstances he has no right to rely on professional privilege as to the communications between himself and his client if they are made with a view to furthering any criminal purpose⁴.

There are other areas where a solicitor's duty of confidentiality may be overridden, for example:

- 962 (1) where a solicitor knows or strongly suspects that a crime is being or is about to be committed by his client; this particularly applies in the case of children and family matters⁵;
- 963 (2) where the court orders disclosure or a warrant permits a police officer or other authority to seize confidential information⁶;
- 964 (3) if the communications are a matter of public record⁷.

1 See the Money Laundering Regulations 2007, SI 2007/2157, reg 3(1)(d); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 539 et seq.

2 See the Money Laundering Regulations 2007, SI 2007/2157, regs 5-18; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 542-550.

3 See the Money Laundering Regulations 2007, SI 2007/2157, reg 45; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 565.

4 See the Terrorism Act 2000 ss 19, 39, the Proceeds of Crime Act 2002 s 330; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 394, 415; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) 797.

5 See the Solicitors' Code of Conduct 2007 Guidance to rule 4 notes 13-15.

6 See the Solicitors' Code of Conduct 2007 Guidance to rule 4 note 16.

7 See the Solicitors' Code of Conduct 2007 Guidance to rule 4 note 18.

UPDATE

741 Exceptions to the duty of confidentiality

NOTES 5-7--Solicitors' Code of Conduct 2007 Guidance to r 4 notes 13-16, 18 now notes 12-15, 17.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(iii) Eligibility for Offices and Appointments/742. In general.

(iii) Eligibility for Offices and Appointments

742. In general.

Judicial and certain other appointments are reserved for persons with certain qualifications¹. A person has:

- 965 (1) a 'Supreme Court qualification' if he has a right of audience² in relation to all proceedings in the Supreme Court³;
- 966 (2) a 'High Court qualification' if he has a right of audience in relation to all proceedings in the High Court⁴;
- 967 (3) a 'general qualification' if he has a right of audience in relation to any class of proceedings in any part of the Supreme Court, or all proceedings in county courts or magistrates' courts⁵;
- 968 (4) a 'Crown Court qualification' if he has a right of audience in relation to all proceedings in the Crown Court⁶;
- 969 (5) a 'county court qualification' if he has a right of audience in relation to all proceedings in county courts⁷;
- 970 (6) a 'magistrates' court qualification' if he has a right of audience in relation to all proceedings in magistrates' courts⁸.

Any reference in any enactment, measure or statutory instrument to a person having such a qualification of a particular number of years' length⁹ is to be construed as a reference to a person who has that qualification for the time being¹⁰, and has had it for a period, which need not be continuous, of at least that number of years¹¹.

1 See eg the Supreme Court Act 1981 s 10(3)(b), (c); and **COURTS** vol 10 (Reissue) PARA 515. As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 para 1. Consequently the Courts and Legal Services Act 1990 s 71(3)(a), (c) is prospectively amended by the Constitutional Reform Act 2005 Sch 11 para 4(1), (3) to refer to a Senior Courts qualification and the Senior Courts instead of the Supreme Court qualification and the Supreme Court. At the date at which this volume states the law no such day had been appointed. As to appointments confined to solicitors see PARA 743; and as to those which solicitors or other qualified persons may hold see PARA 744. See also the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS**.

2 For these purposes, references to a right of audience are references to a right of audience granted by an authorised body: Courts and Legal Services Act 1990 s 71(4). As from a day to be appointed s 71(4) is amended by the Legal Services Act 2007 Sch 21 paras 83, 94(a) so that references to a right of audience are references to a right of audience exercisable by virtue of an authorisation given by a relevant approved regulator. As to the meaning of 'right of audience' generally see PARA 495 note 3. As to the meaning of 'relevant approved regulator' see the Legal Services Act 2007 s 20(3); and PARA 358 (definition applied by the Courts and Legal Services Act 1990 s 71(6A) (prospectively added by the Legal Services Act 2007 Sch 21 paras 83, 94(c)).

3 Courts and Legal Services Act 1990 s 71(3)(a) (prospectively amended: see note 2).

4 Courts and Legal Services Act 1990 s 71(3)(b).

5 Courts and Legal Services Act 1990 s 71(3)(c) (prospectively amended: see note 2).

6 Courts and Legal Services Act 1990 s 71(3)(d).

7 Courts and Legal Services Act 1990 s 71(3)(e).

8 Courts and Legal Services Act 1990 s 71(3)(f).

9 Courts and Legal Services Act 1990 Sch 10 makes consequential amendments to a large number of such enactments, measures and statutory instruments. For examples see PARA 744.

10 Courts and Legal Services Act 1990 s 71(5)(a).

11 Courts and Legal Services Act 1990 s 71(5)(b). Any period during which a person had a right of audience but was as a result of disciplinary proceedings prevented by the authorised body concerned from exercising it does not count towards the period mentioned in s 71(5)(b): s 71(6) (substituted by the Access to Justice Act 1999 Sch 6 paras 4, 9). The reference to the authorised body concerned is prospectively amended to refer to the relevant approved regulator by the Legal Services Act 2007 Sch 21 paras 83, 94(c).

UPDATE

742 In general

NOTE 1--Day appointed is 1 October 2009: SI 2009/1604.

NOTE 2--Day appointed is 1 January 2010: SI 2009/3250.

NOTE 11--Amendment in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(iii) Eligibility for Offices and Appointments/743. Appointments confined to solicitors.

743. Appointments confined to solicitors.

Certain appointments which were formerly open only to solicitors may now be held by barristers or other persons with suitable qualifications¹. The president, chairman or solicitor member of the Solicitors Disciplinary Tribunal² must, however, be a solicitor of not less than ten years' standing³.

1 See PARAS 742, 744.

2 As to the Tribunal see PARA 906.

3 See the Solicitors Act 1974 s 46(3)(a), (9)(a), (10)(a), (b); the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, rr 3, 4; and PARA 906.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(4) LEGAL RIGHTS AND DUTIES/(iii) Eligibility for Offices and Appointments/744. Appointments open to solicitors.

744. Appointments open to solicitors.

Certain offices may be held by duly qualified solicitors, although barristers¹ or other fit and proper persons are in many cases also eligible for appointment. These offices include those of:

- 971 (1) Official Solicitor to the Supreme Court²;
- 972 (2) admiralty registrar³;
- 973 (3) circuit judge⁴;
- 974 (4) commissioner for oaths⁵;
- 975 (5) coroner⁶;
- 976 (6) Director of Public Prosecutions⁷;
- 977 (7) district judge⁸;
- 978 (8) district probate registrar⁹;
- 979 (9) Lands Tribunal President¹⁰ or legal member¹¹;
- 980 (10) legal assessor to the investigation committee, the interim order panel and the fitness to practise panel of the General Medical Council¹², to the Council of the Royal Pharmaceutical Society of Great Britain¹³, to the investigating committee, the professional conduct committee, the health committee or the Registrar of the General Chiropractic Council¹⁴, to the investigating committee, the profession conduct committee, the health committee or the Registrar of the General Osteopathic Council¹⁵, to the fitness to practise committee and the registration appeals committee of the General Optical Council¹⁶, the disciplinary committee to the Hearing Aid Council¹⁷, the disciplinary committee to the Royal College of Veterinary Surgeons¹⁸ and to the Nursing and Midwifery Council or the screeners, the practice committees or the Registrar of that Council¹⁹;
- 981 (11) master of the Queen's Bench²⁰ or Chancery Division²¹;
- 982 (12) mental health review tribunal legal member or until a day to be appointed chairman (or as from a day to be appointed president)²²;
- 983 (13) District Judge (Magistrates' Courts)²³ and Deputy District Judge (Magistrates' Courts)²⁴;
- 984 (14) Queen's coroner and attorney and master of the Crown Office and registrar of criminal appeals²⁵;
- 985 (15) recorder²⁶ or assistant recorder²⁷;
- 986 (16) registrar in bankruptcy of the High Court²⁸;
- 987 (17) registrar of criminal appeals²⁹;
- 988 (18) district judge of the principal registry of the Family Division³⁰;
- 989 (19) costs judge of the Supreme Court³¹;
- 990 (20) transport tribunal president³² and chairman³³.

Heads (1) to (20) above are by way of example only, and do not purport to constitute an exhaustive list.

¹ See PARA 1033.

² See the Supreme Court Act 1981 Sch 2, Pt I; the Tribunals Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 667. As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

- 3 See the Supreme Court Act 1981 Sch 2 Pt II; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 660.
- 4 See the Courts Act 1971 s 16(3); the Tribunals Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 522.
- 5 See PARA 577.
- 6 See the Coroners Act 1988 s 2(1); and **CORONERS** vol 9(2) (2006 Reissue) PARA 913.
- 7 See the Prosecution of Offences Act 1985 s 2(2); and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2005 Reissue) PARA 1066.
- 8 See the County Courts Act 1984 s 9; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 530.
- 9 See the Supreme Court Act 1981 Sch 2 Pt III; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 659.
- 10 See the Lands Tribunal Act 1949 s 2(2); the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 812.
- 11 See the Lands Tribunal Act 1949 s 2(2); and **COURTS** vol 10 (Reissue) PARA 812.
- 12 See the Medical Act 1983 Sch 4 para 7(1); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 154.
- 13 See the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, art 61; and **MEDICAL PROFESSIONS**.
- 14 See the Chiropractors Act 1994 s 27; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 674.
- 15 See the Osteopaths Act 1993 s 27; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 579.
- 16 See the Opticians Act 1989 s 23D; and **MEDICAL PROFESSIONS**.
- 17 See the Hearing Aid Council Act 1968 s 11(1); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 876.
- 18 See the Veterinary Surgeons Act 1966 Sch 2 para 6(1); and **ANIMALS** vol 2 (2008) PARA 1161.
- 19 See the Nursing and Midwifery Order 2001, SI 2002/253, art 34; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 753.
- 20 See the Supreme Court Act 1981 Sch 2 Pt II; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 654.
- 21 See the Supreme Court Act 1981 Sch 2 Pt II; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 654.
- 22 See the Mental Health Act 1983 Sch 2 paras 1(a), 3; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 561.
- 23 See the Courts Act 2003 s 22; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS**.
- 24 See the Courts Act 2003 s 24; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS**.
- 25 See the Courts Act 1971 s 24(1)(b); the Supreme Court Act 1981 Sch 2 Pt II; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 654.
- 26 See the Courts Act 1971 s 21(2); the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 526.
- 27 See the Courts Act 1971 s 24(1)(b); the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 526.
- 28 See the Supreme Court Act 1981 Sch 2 Pt II; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 666.
- 29 See the text and note 26.

30 See the Supreme Court Act 1981 Sch 2 Pt II; the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 658.

31 See the Supreme Court Act 1981 Sch 2 Pt II (although this provision refers to a taxing master of the Senior Courts, a taxing master is now known as a costs judge and not until a day to be appointed is the Supreme Court renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1. At the date at which this volume states the law no such day had been appointed); the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 656.

32 See the Transport Act 1985 Sch 4 para 2(2); the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 813.

33 See the Transport Act 1985 Sch 4 para 2(2A); the Tribunals, Courts and Enforcement Act 2007 s 50; and **COURTS** vol 10 (Reissue) PARA 813.

UPDATE

744 Appointments open to solicitors

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTES 2, 31--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(5) LIABILITIES OF SOLICITORS AS OFFICERS OF THE SUPREME COURT/(i) In general/745. Disciplinary jurisdiction.

(5) LIABILITIES OF SOLICITORS AS OFFICERS OF THE SUPREME COURT

(i) In general

745. Disciplinary jurisdiction.

The Supreme Court¹ possesses an inherent disciplinary² jurisdiction over solicitors³, as solicitors are officers of the court⁴. Under this jurisdiction action may be taken against a solicitor both for his own misconduct and for the actions of his trainee solicitor⁵ within the scope of his authority even where the solicitor is not personally implicated⁶. The power of the High Court or Court of Appeal to punish for contempt of court may be exercised by an order of committal⁷.

1 As from a day to be appointed the Supreme Court is renamed the Senior Courts (see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**) and accordingly in the Solicitors Act 1974 s 50 the words 'Senior Courts' are substituted for the words 'Supreme Court' by the Constitutional Reform Act 2005 Sch 11 Pt 4 para 21(5). At the date at which this volume states the law no such day had been appointed.

2 'The attachment (formerly the summary process against a solicitor, now obsolete) was something more than process; it was punitive or disciplinary, for the court was proceeding against its own officer': *Re Freston* (1883) 11 QBD 545 at 557, CA, per Fry LJ. The discipline to which solicitors are subject is both punitive and compensatory: *R & T Thew Ltd v Reeves (No 2)* [1982] QB 1283n, [1982] 3 All ER 1086, CA.

3 The High Court, the Crown Court and the Court of Appeal respectively, or any division or judge of those courts, may, subject to the provisions of the Solicitors Act 1974, exercise the same jurisdiction in respect of solicitors as any one of the superior courts of law or equity from which the Supreme Court was constituted might have exercised immediately before the passing of the Supreme Court of Judicature Act 1873 (repealed) in respect of any solicitor, attorney or proctor admitted to practise there: Solicitors Act 1974 s 50(2) (prospectively amended: see note 1). An appeal lies to the Court of Appeal from any order made against a solicitor by the High Court or the Crown Court in exercise of this jurisdiction: s 50(3) (added by the Supreme Court Act 1981 s 147, Sch 7). All duly admitted solicitors are officers of the Supreme Court: Solicitors Act 1974 s 50(1) (amended by the Supreme Court Act 1981 s 152(4), Sch 7 and prospectively amended (see note 1)). For a consideration of the court's inherent jurisdiction see *Brendon v Spiro* [1938] 1 KB 176 at 185-192, [1937] 2 All ER 496 at 498-503, CA, per Scott LJ.

4 Thus, a solicitor may be summarily ordered to perform undertakings, with a view to securing honesty in the conduct of officers of the court (*Re Hilliard, ex p Smith* (1845) 2 Dow & L 919; *United Mining and Finance Corp'n Ltd v Becher* [1910] 2 KB 296 at 304, DC (on appeal [1911] 1 KB 840, CA): see PARA 749 et seq), or to pay costs (*Brendon v Spiro* [1938] 1 KB 176, [1937] 2 All ER 496: see PARAS 753, 879 et seq), or to make good loss caused by his neglect or breach of duty (*Marsh v Joseph* [1897] 1 Ch 213 at 245, CA, per Lord Russell of Killowen LC): see PARA 754), or to pay over money to his client (*Re Grey* [1892] 2 QB 440 at 447, CA, per Bowen LJ; *Re A Solicitor, ex p Hales* [1907] 2 KB 539 at 544, DC, per Darling J: see PARA 755 et seq), or may be suspended or have his name struck off the roll for misconduct (*Re Gregg, Re Prance* (1869) LR 9 Eq 137 at 141 per Lord Romilly MR: see PARA 907 et seq). Although the power to strike off the roll is preserved by the Solicitors Act 1974 ss 47(1), 50(2) (see note 3; and PARA 907), this punitive jurisdiction of the court is now rarely if ever exercised; it is for the Solicitors Disciplinary Tribunal (see PARA 906) to strike a solicitor off the roll, suspend him or fine him, and in all but the most exceptional cases it would be inappropriate for any judge to exercise this jurisdiction of his own motion: *R & T Thew Ltd v Reeves (No 2)* [1982] 3 All ER 1086 at 1088, [1982] 3 WLR 869n at 871, CA, per Lord Denning MR. The compensatory jurisdiction is, however, retained by the courts themselves: *R & T Thew Ltd v Reeves (No 2)* per Lord Denning MR. See also *Udall v Capri Lighting Ltd* [1988] QB 907, [1987] 3 All ER 262, CA (undertaking to other side's solicitor to procure security from own clients for money due).

5 The cases refer to a 'solicitors' clerk' or 'articled clerk' but the term 'articled clerk' has now been replaced by the term 'trainee solicitor'.

6 *Myers v Elman* [1940] AC 282, [1939] 4 All ER 484, HL. See also *R & T Thew Ltd v Reeves (No 2)* [1982] QB 1283n, [1982] 3 All ER 1086, CA.

7 See the CPR Sch 1 RSC Ord 52 r 1; and **CIVIL PROCEDURE**.

UPDATE

745 Disciplinary jurisdiction

NOTE 1--Day appointed is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(5) LIABILITIES OF SOLICITORS AS OFFICERS OF THE SUPREME COURT/(i) In general/746. General conduct.

746. General conduct.

A solicitor must never deceive, or knowingly or recklessly mislead, the court¹ and must draw to the court's attention relevant cases and statutory provisions, the contents of any document that has been filed in the proceedings where failure to draw it to the court's attention might result in the court being misled and any procedural irregularity². A solicitor must not construct facts supporting his client's case or draft any documents relating to any proceedings containing any contention which the solicitor does not consider to be properly arguable or any allegation of fraud unless instructed to do so and the solicitor has material which he reasonably believes establishes a case of fraud³. A solicitor must comply with any court order requiring him or his firm to take or refrain from taking a particular course of action and must not become in contempt of court⁴.

A solicitor must not refuse to act as an advocate for any person on any of the following grounds:

- 991 (1) that the nature of the case is objectionable to the solicitor or any section of the public;
- 992 (2) that the conduct, opinions or beliefs of the prospective client are unacceptable to the solicitor or any section of the public; or
- 993 (3) that the source of any financial support which may properly be given to the prospective client for the proceedings is unacceptable to the solicitor⁵.

A solicitor is not required to act as an advocate under a conditional fee agreement or if he reasonably considers that he is not being offered a proper fee having regard to the circumstances of the case, the nature of the solicitor's practice or his experience and standing⁶.

If a solicitor is appearing as an advocate he must not:

- 994 (a) say anything which is merely scandalous or intended only to insult a witness or any other person;
- 995 (b) avoid naming in open court any third party whose character would thereby be called into question, unless it is necessary for the proper conduct of the case;
- 996 (c) call into question the character of a witness the solicitor has cross-examined unless the witness has had the opportunity to answer the allegations during cross-examination; and
- 997 (d) suggest that any person is guilty of a crime, fraud or misconduct unless such allegations go to a matter which is material to his client's case and appear to the solicitor to be supported by reasonable grounds⁷.

A solicitor must not appear as an advocate at a trial or act in the litigation if it is clear he or anyone within his firm will be called as a witness⁸.

A solicitor must not make, or offer to make, payments to a witness dependent upon the nature of the evidence given or upon the outcome of the case⁹.

¹ For these purposes 'court' means any court, tribunal or inquiry of England and Wales or a British court martial, or any court of another jurisdiction: Solicitors' Code of Conduct 2007 r 24.01.

2 Solicitors' Code of Conduct 2007 r 11.01(1), (2). Rule 11 applies to an overseas practice in relation to litigation or advocacy conducted before a court, tribunal or inquiry in England and Wales or a British court martial: r 15.11. Rule 11 does not apply to an overseas practice in relation to litigation or advocacy conducted before a court or tribunal in another jurisdiction but r 1 (see PARA 831) will always apply: r 15.11.

3 See the Solicitors' Code of Conduct 2007 r 11.01(3).

4 Solicitors' Code of Conduct 2007 r 11.02, 11.03. As to contempt of court see PARAS 747-748.

5 Solicitors' Code of Conduct 2007 r 11.04(1).

6 Solicitors' Code of Conduct 2007 r 11.04(2).

7 Solicitors' Code of Conduct 2007 r 11.05.

8 Solicitors' Code of Conduct 2007 r 11.06. However this does not apply if the solicitor is satisfied that appearing as a witness will not prejudice his independence as an advocate or litigator or the interests of his client or the interests of justice: r 11.06.

9 Solicitors' Code of Conduct 2007 r 11.07.

UPDATE

746 General conduct

TEXT AND NOTES 2, 3--Solicitors' Code of Conduct 2007 r 11.01 amended on 24 August 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(5) LIABILITIES OF SOLICITORS AS OFFICERS OF THE SUPREME COURT/(i) In general/747. Criminal contempt.

747. Criminal contempt.

A solicitor is guilty of a contempt of a criminal nature¹ where he is guilty of conduct, whether in or out of court², amounting to a contemptuous interference with the administration of justice³; for instance, where he insolently defies the judge in open court⁴ or uses improper language to the judge⁵ or to the solicitor of the opposite party⁶; where he writes to the press with reference to the merits of a pending case in which he is professionally interested⁷; where he prepares a special case for the opinion of the court based upon a fictitious statement of facts⁸; where he seeks to recover gaming debts by disguising the nature of the claim⁹; or where he destroys documents on which a charge of misconduct against him has been founded pending presentation of the report on the charge¹⁰. However, the writing of a letter as solicitor for a landlord to a tenant threatening to determine the tenancy if the tenant did not abandon an action against a third person has been held not to be a contempt of court¹¹. Until a day to be appointed a solicitor who acts in legal proceedings on behalf of a client in his own name or in the name of another solicitor whilst he himself is in prison, and a solicitor who permits a solicitor in prison to use his name for the purpose, are guilty of contempt¹².

1 See *Re Freston* (1883) 11 QBD 545 at 555, CA, per Brett MR. As to criminal contempt generally see **CONTEMPT OF COURT** vol 9(1) Reissue PARA 404 et seq. The attachment (now obsolete) of a solicitor under this inherent jurisdiction was not, it seems, a thing adjudged 'in a criminal cause or matter' within what is now the Supreme Court Act 1981 s 18(1)(a) (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1692), so that an appeal lay: see *Scott v Scott* [1913] AC 417 at 459-461, HL, per Lord Atkinson, considering *Re Freston*. As to contempt appeals see now the Administration of Justice Act 1960 s 13; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 512 et seq.

2 See **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 406. As to contempt committed out of court see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 409 et seq.

3 *R v Almon* (1765) Wilm 243 at 254, approved in *Re Martin, ex p Van Sandau* (1844) 1 Ph 445; and in *Re Johnson* (1887) 20 QBD 68, CA.

4 *Watt v Ligertwood* (1874) LR 2 Sc & Div 361, HL.

5 *Ex p Pater* (1864) 5 B & S 299; *Re Pollard* (1868) LR 2 PC 106.

6 *Re Johnson* (1887) 20 QBD 68, CA, where there was an altercation in the corridor of the Law Courts after leaving the judge in chambers. Contrast *Re Clements, Costa Rica Republic v Erlanger* (1877) 46 LJ Ch 375, CA, where there was an altercation in the solicitor's office. See also **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 406-407.

7 *Daw v Eley* (1868) LR 7 Eq 49. See also the cases cited in **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 16. As to warning letters to trade journals concerning trade marks see *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd, Re Trade Mark No 249457* [1960] 3 All ER 289, [1960] 1 WLR 1145.

8 *Re Elsam* (1824) 3 B & C 597. Cf *Coxe v Phillips* (1736) Lee temp Hard 237; *Bishop v Willis* (1749) 5 Beav 83n.

9 *R v Weisz, ex p Hector MacDonald Ltd* [1951] 2 KB 611, [1951] 2 All ER 408.

10 *Re A Solicitor* [1915] 1 IR 152.

11 *Webster v Bakewell RDC* [1916] 1 Ch 300.

12 See the Solicitors Act 1974 s 40(1), (2)(b) (prospectively repealed); and PARA 394. Nor can such a solicitor maintain any action for the recovery of any costs in respect of any business done by him while so confined: see s 40(2)(a) (prospectively repealed).

UPDATE

747 Criminal contempt

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(5) LIABILITIES OF SOLICITORS AS OFFICERS OF THE SUPREME COURT/(i) In general/748. Civil contempt.

748. Civil contempt.

A solicitor is liable to punishment for civil contempt¹, for instance where he fails to perform an undertaking given by him in his capacity as an officer of the court². In many cases the act done by the solicitor which calls for the court's intervention is not in itself a contempt; the court in the first instance makes an order against the solicitor, and it is his disobedience to the order which constitutes the actual contempt³. In particular, where the court has ordered a solicitor to pay costs for misconduct as such, or to pay a sum of money in his capacity as an officer of the court, the solicitor, on making default, is liable to committal and imprisonment for a period not exceeding one year⁴, although the court has a discretion to refuse the committal⁵. In these cases the contempt consists in the breach of duty by the solicitor as an officer of the court, as distinct from his legal liability to pay, and a common law judgment for the recovery of the amount due is no bar to a subsequent proceeding for payment under the disciplinary jurisdiction⁶. The court, however, will not intervene summarily where the solicitor acted in his private capacity⁷, for example as a trustee⁸ or arbitrator⁹, or even where he merely acted in the ordinary course of business as a solicitor¹⁰; the act must have been done by him as an officer of the court¹¹.

1 As to civil contempt see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 458 et seq.

2 See PARA 749 et seq.

3 *Re A Solicitor* (1877) 36 LT 113, DC. See also PARA 749; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 52 et seq.

4 See the Debtors Act 1869 s 4 para 4: and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 485.

5 See the Debtors Act 1878 s 1; and **CONTEMPT OF COURT** vol 9(1) (Reissue) para 522.

6 *Re Grey* [1892] 2 QB 440, CA. See also *Re Wray (a solicitor)* (1887) 36 ChD 138, CA; *Re Simes, Simes v Newbery* (1890) 38 WR 570; *Re Edye* (1891) 39 WR 198; *Re Norris* (1917) 33 TLR 309.

7 *Re Chitty* (1833) 2 Dowl 421.

8 *Pearson v Sutton* (1814) 5 Taunt 364; *Re Blanchard (a solicitor)*, *Re Le Doucet's Mortgage* (1861) 7 Jur NS 505.

9 *Re Anon* (1849) 19 LJ Ex 219.

10 *Re Ditchman, ex p Bull* (1833) 3 Deac & Ch 116; *Brazier v Bryant* (1834) 2 Dowl 600; *Ex p Cowie* (1835) 3 Dowl 600. Cf *Re An Attorney* (1856) 4 WR 617, where the client had already sued the solicitor; *Meux v Lloyd* (1857) 2 CBNS 409.

11 *Re Phelps and Dodd* (1839) 3 Jur 479; *Re Anon* (1849) 19 LJ Ex 219. However, committal may issue under other heads of the Debtors Act 1869 s 4: see PARA 761.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(5) LIABILITIES OF SOLICITORS AS OFFICERS OF THE SUPREME COURT/(ii) Liability on Undertakings given as a Solicitor/749. Enforcement of undertakings.

(ii) Liability on Undertakings given as a Solicitor

749. Enforcement of undertakings.

A solicitor must fulfil an undertaking¹ which is given in circumstances where he has given the undertaking in the course of practice, or outside the course of practice but as a solicitor, or where he is a principal in a firm, and any person within the firm gives the undertaking in the course of practice, or the solicitor is a registered European lawyer² based at an office in England and Wales and the undertaking is given by him within the UK³.

Where a solicitor who is acting professionally for a client gives his personal undertaking in that character to the client⁴ or to a third person⁵, or gives an undertaking to the court in the course of proceedings⁶, that undertaking may be enforced summarily⁷ upon application to the court⁸. Before this remedy can be pursued it must be shown that the undertaking was given by the solicitor personally⁹, and not merely as agent on behalf of his client¹⁰. The undertaking must also be given by the solicitor, not as an individual¹¹, but in his professional capacity as a solicitor¹².

The jurisdiction is based upon the court's right to require its officers to observe a high standard of conduct; it is immaterial that no misconduct on the part of the solicitor is suggested¹³. The solicitor cannot, therefore, defend himself on the ground that his undertaking is not enforceable as a contract against him¹⁴, or on the ground that the application has been delayed¹⁵. An undertaking given under a mistaken belief of having authority to fulfil it will not be set aside¹⁶; nor can the solicitor withdraw from his undertaking save by consent¹⁷; but an undertaking given by mistake in too wide terms will not be enforced in so far as it was mistakenly given¹⁸.

The undertaking must be clear in its terms¹⁹. The whole of the agreement to which it relates must be before the court²⁰, and the undertaking must be one which is not impossible ab initio for the solicitor to perform²¹. Nevertheless, an undertaking will be enforced against the solicitor even though, after it is given, the client dies²² or instructs the solicitor not to perform it²³, or changes his solicitor²⁴. If performance of the undertaking has been waived the undertaking will not be enforced afterwards²⁵. Similarly, if the undertaking is conditional, the condition must be fulfilled before the undertaking will be enforced²⁶.

A principal in a firm must not exclude or attempt to exclude by contract all liability to his clients²⁷.

1 As to the meaning of 'undertaking' within the Solicitors' Code of Conduct 2007 see PARA 871 note 5.

2 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

3 Solicitors' Code of Conduct 2007 r 10.05(1). The undertaking must be fulfilled within a reasonable time: see r 10.05(2). If the undertaking is dependent upon the happening of a future event and that event will not occur the solicitor must notify the recipient immediately: see r 10.05(3). An undertaking to pay another's costs will be discharged if the matter does not proceed unless expressly agreed otherwise: see r 10.05(4).

4 It may not be often that requisite circumstances arise since the undertaking would usually be given as an individual, but in principle the statement is correct: see *Re A Solicitor, ex p Hales* [1907] 2 KB 539 at 544-545 (not affected on this point by *United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296, DC).

5 Eg *Re Gee* (1845) 2 Dow & L 997; *Re A Solicitor* [1966] 3 All ER 52, [1966] 1 WLR 1604 (undertaking to a bank).

6 In these circumstances it is regarded on the same footing as an injunction to the like effect and may be enforced by committal (*D v A & Co* [1900] 1 Ch 484), but usually an undertaking given by counsel in court is that of his clients and is not the undertaking of his solicitors (see eg *Re Williams* (1850) 12 Beav 510).

7 In a county court, by an application for committal (see CPR Sch 2 CCR Ord 29 r 2; the County Courts Act 1984 s 142); in the Supreme Court, by motion (*Re FC* [1888] WN 77 (Chancery Division)) or summons (*United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296, DC); or by motion to the Court of Appeal if given to that court (*Jonesco v Evening Standard Co Ltd* [1932] 2 KB 340 at 342, CA). See, however, *Pott v Stuteley* [1935] WN 140, where it was held that the court of first instance could entertain a motion for committal for disobeying an injunction made by the Court of Appeal. The remedy in the High Court is by committal: see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 483. The practice has always been for the court first to make a mandatory order on the solicitor to perform his undertaking: *Re A Solicitor* [1966] 3 All ER 52, [1966] 1 WLR 1604. Where the undertaking is not given in the course of legal proceedings, the application to enforce it is by originating summons to a single judge: *Re A Solicitor* (1969) 113 Sol Jo 549, DC.

8 See **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 482. As to an oral guarantee by a solicitor see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1053. The court cannot compel a solicitor to give a personal undertaking: *Chilton v Blair & Co Ltd* (1914) 8 BWCC 1; but see *Sturla v Freccia* (1880) 28 WR 360 at 362, CA, and cf *A-G v Emerson* (1889) 24 QBD 56, CA. As to whether there is jurisdiction to relieve a solicitor of an undertaking given to another solicitor see *Hughes v Hughes* [1958] P 224 at 229, [1958] 3 All ER 179 at 181, CA; and PARA 1003. The summary procedure is inappropriate where the issues are difficult and require detailed investigation: *Silver and Drake v Baines* [1971] 1 QB 396, [1971] 1 All ER 473, CA. The jurisdiction may still be exercised, however, where a clear case is established against the solicitor: *John Fox (a firm) v Bannister, King & Rigbeys (a firm)* [1988] QB 925n, [1987] 1 All ER 737, CA; *Hastingwood Property Ltd v Saunders Bearman Anselm (a firm)* [1991] Ch 114, [1990] 3 All ER 107. See also *Bentley v Gaisford* [1997] QB 627, [1997] 1 All ER 842, CA (restraint not available as a remedy and inappropriate to order compensation because conduct resulting in breach of undertaking was not inexcusable and as such likely to merit reproof).

9 *Burrell v Jones* (1819) 3 B & Ald 47; *Iveson v Conington* (1823) 1 B & C 160; *Watson v Murrel* (1824) 1 C & P 307; *Re Bentley, ex p Bentley* (1833) 2 Deac & Ch 578; *Hall v Ashurst* (1833) 1 Cr & M 714; *Brandon v Smith* (1853) 1 WR 130; *Leedham v Baxter* (1856) 4 WR 241. An undertaking expressed to be given 'on behalf of' may be construed as the personal undertaking of the solicitors giving it: *Re C* (1908) 53 Sol Jo 119, DC; cf *Johnson v Ogilby* (1734) 3 P Wms 277; *Appleton v Binks* (1804) 5 East 148.

10 *Downman v Williams* (1845) 7 QB 103, Ex Ch; *Re Williams* (1850) 12 Beav 510; *Lewis v Nicholson* (1852) 18 QB 503; *Burnett v Proois, Re An Attorney* (1870) 22 LT 543. Cf *Walker v Arlett* (1831) 1 Dowl 61.

11 *Walker v Arlett* (1831) 1 Dowl 61; *Northfield v Orton* (1832) 1 Dowl 415; *Ex p Watts* (1832) 1 Dowl 512; *Re Bateman* (1833) 2 Dowl 161; *Ex p Clifton* (1836) 5 Dowl 218; *Re Samuel v Rhodes, ex p Samuel v Isaacs* (1838) 2 Jur 858; *Ex p Evans* (1840) 4 Jur 991; *Re Webb* (1845) 14 LJB 244; *Russel v Reece* (1847) 2 Car & Kir 669; *Re Kearns* (1847) 11 Jur 521; *Allaway v Duncan* (1867) 16 LT 264.

12 *Re Gee* (1845) 2 Dow & L 997; *Re Fairthorne* (1846) 1 Saund & C 40; *United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296 at 307, DC, per Hamilton J (not following on another point *Peart v Bushell* (1827) 2 Sim 38, and *Re A Solicitor, ex p Hales* [1907] 2 KB 539, DC); *Silver and Drake v Baines* [1971] 1 QB 396, [1971] 1 All ER 473, CA. See *Re Pass* (1887) 35 WR 410; *Re FC* [1888] WN 77; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 483. An undertaking by a partner is binding on his firm (*Alliance Bank v Tucker* (1867) 17 LT 13), provided that he is acting within his authority in giving it (*Hasleham v Young* (1844) 5 QB 833). An undertaking given by a trainee solicitor may bind his employer: *Young v Power* (1862) 14 Ir Jur 388. See also *Udall v Capri Lighting Ltd* [1988] QB 907, [1987] 3 All ER 262, CA (where conduct inexcusable, court may make compensatory order of a disciplinary nature); *Rooks Rider (a firm) v Steel* [1993] 4 All ER 716, [1994] 1 WLR 818 (client's fraudulent intention in entering into transaction not vitiating solicitor's undertaking).

13 *United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296, DC. See also *Udall v Capri Lighting Ltd* [1988] QB 907, [1987] 3 All ER 262, CA.

14 *Senior v Butt* (1827) 5 LJOSKB 136; *Evans v Duncombe* (1831) 1 Cr & J 372; *Re Paterson* (1832) 1 Dowl 468; *Re Hilliard, ex p Smith* (1845) 2 Dow & L 919. Cf *Re Kearns* (1847) 11 Jur 521.

15 *Re Swan* (1846) 15 LJB 402.

16 *The Gertrud* (1927) 138 LT 239.

17 *The Borre* [1921] P 390.

18 *Mullins v Howell* (1879) 11 ChD 763.

19 *Thompson v Gordon* (1846) 15 M & W 610.

20 *Gilbert v Cooper* (1848) 17 LJ Ch 265.

21 *Peart v Bushell* (1827) 2 Sim 38; but see *United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296 at 306, DC, per Hamilton J. See also *Silver and Drake v Baines* [1971] 1 QB 396, [1971] 1 All ER 473, CA. Cf *Re A Solicitor* (1918) 53 ILT 51; and see *Udall v Capri Lighting Ltd* [1988] QB 907, [1987] 3 All ER 262, CA. See also *Citadel Management Inc v Thompson* [1999] 1 FLR 21, CA (solicitor could not avoid an undertaking which had become impossible to perform, where he concealed from the court the fact that performance of the undertaking was reliant on the activities of others).

22 *Hellings v Jones* (1825) 3 Bing 70. See *Bailey v Daniell* (1834) Hayes & Jo 586.

23 *Re Kerly, Son and Verden* [1901] 1 Ch 467, CA: see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 483. See *John Fox (a firm) v Bannister King & Rigbeys (a firm)* [1988] QB 925n, [1987] 1 All ER 737, CA (undertaking to hold money for third party; money returned to client on demand; subsequent bankruptcy of client).

24 *Williams v Williams and Partridge* (1910) 54 Sol Jo 506, CA.

25 *Miller v James* (1923) 8 Moore CP 208; *The Borre* [1921] P 390 at 397-398. Cf *Staite v Haddon* (1841) 9 Dowl 995. As to waiver of civil contempt see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 462.

26 *Hill v Fletcher* (1850) 5 Exch 470; *Leedham v Baxter* (1856) 4 WR 241.

27 Solicitors' Code of Conduct 2007 r 2.07. However liability may be limited under certain circumstances: see r 2.07(a)-(c). Similar provisions apply in relation to an overseas practice: see r 15.02(3).

UPDATE

749 Enforcement of undertakings

TEXT AND NOTES 1, 3, 27--Solicitors' Code of Conduct 2007 rr 2, 10, 15 amended on 31 March 2009.

NOTE 8--See *Angel Solicitors (a firm) v Jenkins O'Dowd & Barth* [2009] EWHC 46 (Ch), [2009] 14 EG 88, [2009] All ER (D) 133 (Jan) (undertaking to discharge mortgages not performed); and *Clark v Lucas Solicitors LLP* [2009] EWHC 1952 (Ch), [2010] 1 P & CR D5, [2009] All ER (D) 11 (Aug) (undertaking enforced even though dependant on third party release of charge as was not outside solicitor's control).

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750. Undertakings in litigation.

Undertakings¹ may be given by a solicitor in connection with legal proceedings which he is conducting on behalf of a client². If when the undertaking was given the solicitor was duly authorised by his client, the subsequent attempted withdrawal of authority by the client does not excuse the solicitor³. If, on the other hand, the solicitor had no authority from his client to give the undertaking, and the client refuses to authorise him to acknowledge service he is liable to an action for damages for breach of warranty of authority⁴. Again, the solicitor may, in the course of the proceedings, give his personal undertaking not to interfere with a witness⁵, or may undertake to stamp a document⁶. Where an action is compromised or settled he may bind himself personally to carry out the terms of the compromise⁷. Thus, he may undertake that his client will consent to a reference⁸, or that the debt⁹, including the costs¹⁰, will be paid. After judgment he may undertake not to issue execution in consideration of payment of the judgment debt being accelerated¹¹.

Where an order is made for a stay of execution pending appeal, and the applicant pays the taxed costs of the successful party to his solicitor on the solicitor's personal undertaking to repay them should the appeal be successful, the undertaking given by the solicitor may be enforced in a summary manner¹², as in the absence of this undertaking the court might have stayed execution or directed the money to be paid into court to abide the event of the appeal¹³. However, where the solicitor, although asked to give an undertaking to repay costs in the event of the decision being reversed, refuses, and the costs in the court below are duly paid, the court has no power, if the decision is reversed on appeal, to order the solicitor to repay the costs to the successful appellant. The remedy in these circumstances is against the respondent client and not against the solicitor¹⁴.

1 As to the meaning of 'undertaking' within the Solicitors' Code of Conduct 2007 see PARA 871 note 5.

2 If the undertaking is in connection with a court order, it is immaterial that the undertaking is not embodied in the order: *Williams v Williams and Partridge* (1910) 54 Sol Jo 506, CA.

3 *Re Kerly, Son and Verden* [1901] 1 Ch 467, CA. See also *The Crimdon* [1900] P 171; *The Borre* [1921] P 390; *The Gertrud* (1927) 138 LT 239. After authorising his solicitor to acknowledge service, the client cannot withdraw his authority after the undertaking has been given: cf *Re Kerly, Son and Verden* at 472 per Farwell J. However, a solicitor who accepts service without undertaking to acknowledge service is not liable to committal: cf *The Anna and Bertha* (1891) 64 LT 332.

4 See *Yonge v Toynbee* [1910] 1 KB 215, CA.

5 *Lawford v Spicer, Re A Solicitor of the Court* (1856) 4 WR 497.

6 *Re Coolgardie Goldfields Ltd, Re Cannon, Son and Morten* [1900] 1 Ch 475. See **CIVIL PROCEDURE** vol 11 (2009) PARA 959. As to an undertaking as to damages on the grant of an interlocutory injunction where the claimant is out of the jurisdiction see **CIVIL PROCEDURE** vol 11 (2009) PARA 423.

7 *Leedham v Baxter* (1856) 4 WR 241. Cf *Re Aytoun, ex p The Official Solicitor of The Supreme Court* (1904) 20 TLR 252, where the solicitor, who had proved for a sum of money on the bankruptcy of his client, who was a person under disability, undertook, on a motion being made by the Official Solicitor as committee, to pay the money into court.

8 *Ex p Hughes* (1822) 5 B & Ald 482.

- 9 *Harper v Williams* (1843) 4 QB 219.
- 10 *Iveson v Conington* (1823) 1 B & C 160; *Re Woodfin and Wray* (1882) 51 LJ Ch 427. Cf *Hall v Ashurst* (1833) 1 Cr & M 714; *Re Bentley, ex p Bentley* (1833) 2 Deac & Ch 578.
- 11 *Re Commonwealth Land, Building, Estate and Auction Co Ltd, ex p Hollington* (1873) 43 LJCh 99.
- 12 *Swyny v Harland* [1894] 1 QB 707, CA; *Dotesio v Biss (No 2)* (1912) 56 Sol Jo 736, CA.
- 13 See *A-G v Emerson* (1889) 24 QBD 56, CA.
- 14 *Hood Barrs v Crossman and Prichard* [1897] AC 172, HL; *Burke v Beatty and White* [1928] IR 91.

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751. Undertakings in other matters.

An undertaking¹ given by a solicitor need not be confined to matters arising in the course of legal proceedings². Thus, a solicitor may give his personal undertaking to pay rent³, or a proportion of counsel's fees⁴, or any other debt⁵ due from his client, and, when acting on behalf of a mortgagor, may bind himself personally to the mortgagee's solicitor to pay his costs⁶.

1 As to the meaning of 'undertaking' within the Solicitors' Code of Conduct 2007 see PARA 871 note 5.

2 *Re Marchant* [1908] 1 KB 998, CA; *United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296, DC (on appeal [1911] 1 KB 840, CA). See also *Ex p Fryer* (1836) 2 Har & W 294; *Re A Solicitor* (1918) 53 ILT 51.

3 *Burrell v Jones* (1819) 3 B & Ald 47.

4 *Hall v Ashurst* (1833) 1 Cr & M 714.

5 *Re Pass* (1887) 35 WR 410. See also *Bray v Stuart A West & Co* [1989] NLJR 753 (undertaking to discharge all subsisting charges); and *Goldman v Abbott* [1989] 2 EGLR 78, CA (undertaking to pay landlord's solicitor's costs on application for landlord's licence to assign lease). An assurance by a solicitor that his undertaking is given in the usual course of business is not sufficient to bind his partner where, on an objective view, the undertaking had not been given in relation to an underlying transaction of a kind which was part of the usual business of a solicitor: *Hirst v Etherington* (1999) Times, 21 July, CA.

6 *Re Gee* (1845) 10 Jur 694.

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752. Right to indemnity.

A solicitor may recover any loss which he suffers in performing an undertaking given on his client's authority in an action against his client¹.

¹ See **AGENCY** vol 1 (2008) PARA 111 et seq. See, however, *Kite v Millman* (1833) 2 Moo & S 616 (solicitor could not claim the benefit of execution proceedings taken against his client which he has been forced to satisfy).

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(iii) Liability to Pay Costs

753. In general.

A solicitor may be ordered to pay costs as an officer of the court or under particular rules of court¹. A solicitor's liability for costs is discussed elsewhere in this title².

¹ See PARA 879 et seq. He may also, if he takes or defends proceedings without authority, be ordered to pay as damages for breach of warranty of authority the amount of the other side's costs: see PARA 796.

² See PARA 879 et seq.

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(iv) Liability to Answer for Loss

754. Extent of liability to answer for loss.

The solicitor's liability as an officer of the court in respect of a failure to fulfil his duties in relation to a matter which is before the court¹ is not confined to costs thrown away, but extends to such loss as is the natural and probable consequence of his conduct². Thus, where a fund in court is paid out to the wrong person, the solicitor who acted on behalf of the recipient is liable to replace the fund if he knew or ought to have known the true state of facts³; although if he merely ratifies the use of his name by the solicitor who acted in the transaction, he is only liable for such part of the fund as he actually received for costs⁴. Similarly, a solicitor who assumes the position of receiver without authority is liable for all money, such as rents, lost to the estate through his neglect⁵; and a solicitor who, as representing the party having the conduct of a sale under an order of the court, is responsible for procuring the investment of the purchase money when paid into court, is liable to make good to the person entitled the loss of interest occasioned by his failure to procure the investment, although he is entitled to set off in respect of any gain resulting from a fall in the price of securities⁶.

1 le the Supreme Court, not a county court: see *Gain v Provincial Advertising Co* (1904) 117 LT Jo 222; *Davies v Coles* (1912) 132 LT Jo 577 (cases relating to the liability to pay costs). See also *R v Smith (Martin)* [1975] QB 531 at 540, [1974] 1 All ER 651 at 654, CA, per Lord Denning MR.

2 *Dixon v Wilkinson* (1859) 4 De G & J 508 at 522-523 per Turner LJ; *Marsh v Joseph* [1897] 1 Ch 213, CA. A solicitor employed by a committee will not under this jurisdiction be made to pay or account to the court for money received for the committee (*Re Butler* (1866) 1 Ch App 607 at 611), nor will a solicitor who takes money out of court in good faith, but misled by an ambiguous plea, be ordered to refund it after having paid it away to his client (*Davies v Richardson* (1888) 21 QBD 202, CA). As to the liability of a solicitor in tort for loss, including financial loss, suffered by a third person as a result of the solicitor's negligent acts or omissions see PARA 820 et seq. He may also be liable in contract. A solicitor may take out an insurance policy against loss arising from claims which may be made against him by reason of any neglect, omission or error committed by him or any person employed by him in or about the conduct of any business conducted by him in his professional capacity, but such a policy will not cover a loss sustained by the solicitor as a result of a clerk's acts by which the clerk fraudulently obtained money from the solicitor's clients: *Davies v Hosken* [1937] 3 All ER 192. As to solicitors' indemnity insurance see PARA 853. As to professional negligence insurance generally see **INSURANCE** vol 25 (2003 Reissue) PARAS 692-697.

3 *Brydges v Branfil* (1842) 12 Sim 369; *Re Dangar's Trusts* (1889) 41 ChD 178 (discussing and following *Ezart v Lister* (1842) 5 Beav 585; *Todd v Studholme* (1857) 3 K & J 324; *Dixon v Wilkinson* (1859) 4 De G & J 508; *Simmons v Rose*, *Weeks v Ward*, *Re Ward* (1862) 31 Beav 1; and *Re Spencer* (1870) 21 LT 808); *Marsh v Joseph* [1897] 1 Ch 213, CA; *Slater v Slater* [1897] 1 Ch 222n. The liability extends to all cases of misfeasance (*Re Dangar's Trusts* at 196 per Stirling J), and, it seems, of nonfeasance (*Dixon v Wilkinson* at 522-523 per Turner LJ; *Batten v Wedgwood Coal and Iron Co* (1886) 31 ChD 346, distinguished in *Re Dangar's Trusts*); but, in the absence of fraud, the exercise of the summary jurisdiction is discretionary and should only be exercised where the court sees that no injustice will be done to the solicitor by it (*Dixon v Wilkinson*). The jurisdiction will not perhaps be exercised where the solicitor has been guilty only of negligence, and the remedy for that by action is available: see *Frankland v Lucas* (1831) 4 Sim 586. The costs of enforcing the liability must be paid by the solicitor: *Slater v Slater*.

4 *Marsh v Joseph* [1897] 1 Ch 213, CA.

5 *Wood v Wood* (1828) 4 Russ 558.

6 *Batten v Wedgwood Coal and Iron Co* (1886) 31 ChD 346. See also *MacDougall v Knight* [1887] WN 68, CA.

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(v) Liability to Pay over Clients' Money

755. Order to pay money to client.

A solicitor who, as solicitor for a client¹, has received and has in his hands money of the client, may² be ordered, on application by or on behalf of that client³ or his personal representatives⁴, under the court's inherent jurisdiction over its officers⁵, to account for money received or paid⁶ and to pay over to the client⁷, or into court⁸, the balance due to the client after deducting any money owing to the solicitor by the client for costs⁹ or other matters.

If the solicitor is a partner in a firm, an order may be made against all partners if the money has been paid to the firm and not been applied as the client directed¹⁰, but an order may be refused as against the firm where the business was transacted by one partner and the money was not paid to the firm and the other partners did not know of its having been received¹¹, or where the other partners were not guilty of any misconduct¹². A solicitor has been ordered summarily to repay money paid with the client's authority to the solicitor's clerk who was then managing the business¹³.

In exercising this summary jurisdiction interest on the money will not usually be awarded against the solicitor¹⁴, although in other proceedings the client may be entitled to it¹⁵.

1 *Ex p Cripwell* (1837) 5 Dowl 689; *Re Cross* (1843) 2 LTOS 227; *Re Hinton, Tylee v Webb* (1851) 14 Beav 14. The jurisdiction extends to a solicitor agent against whom the client of the principal solicitor applies (*Hanley v Cassam* (1847) 10 LTOS 189; *Walker v Pearce, Re An Attorney* (1862) 7 LT 285; *Ex p Edwards* (1881) 8 QBD 262, CA), and also on the application of the solicitor employed by the lay client (*Re Farman, ex p Truman* (1897) 14 TLR 20, DC). Where money was transferred into the joint names of a solicitor and his client for the purposes of securing certain payments, an order to release the money to the client was refused under the summary jurisdiction: *Re Robinson* (1859) 5 Jur NS 1021.

2 The jurisdiction is exercised with caution, as the summary procedure deprives the solicitor of a full trial and investigation: see *Re Hurst and Middleton Ltd, Middleton v The Company* [1912] 2 Ch 520 at 525-526, CA, per Kennedy LJ, and cf *Haigh v Jones* (1843) 1 Dow & L 81.

3 *Re Thornton* (1833) 2 Dowl 156; *Re Fenton* (1835) 3 Ad & El 404; *Dixon v Wilkinson* (1859) 4 De G & J 508. See also *Carl Zeiss Stiftung v Herbert Smith & Co (No 2)* [1969] 2 Ch 276, [1969] 2 All ER 367, CA. This proposition is subject to two qualifications: (1) where the money is trust money or something equivalent (*Re A Solicitor, ex p Hales* [1907] 2 KB 539, DC), the solicitor may be ordered to replace it at the instance of a beneficiary if there has been dishonourable conduct or neglect of duty on his part (*Re Clerihew's Estate, Clerihew v Clerihew, Re Howard* (1871) 24 LT 860; *Re Carroll, Brice v Carroll* [1902] 2 Ch 175); (2) the jurisdiction may be exercised over a person who is not a solicitor but who has pretended to be one. In connection with the payment of trust money see *La Roche v Armstrong* [1922] 1 KB 485, where the money was applied by the solicitor in resisting the claim to establish the trust.

4 *Re Aitkin* (1820) 4 B & Ald 47.

5 This jurisdiction is also exercisable in the case of a recognised body which is acting or has acted for such a client: see the Administration of Justice Act 1985 Sch 2 para 28. As to the meaning of 'recognised body' see PARA 687 note 3.

The basis of this jurisdiction is the prevention of breach of duty: see *Re Grey* [1892] 2 QB 440 at 444, 447, CA; *Re A Solicitor, ex p Hales* [1907] 2 KB 539 at 544, DC. The liability here discussed is that of a solicitor under the court's inherent jurisdiction over its officers. This jurisdiction must be distinguished from that of the court to order payment of money found due on assessment under the Solicitors Act 1974 (see PARA 968 et seq), or to order an account of money received and the payment of any balance found due on proceedings against a

solicitor as agent (see **AGENCY** vol 1 (2008) PARA 87). As to a solicitor's obligation to keep accounts in relation to clients' money see PARA 835 et seq.

6 *Re Aitkin* (1820) 4 B & Ald 47.

7 *Ex p Cripwell* (1837) 5 Dowl 689; *Re Becke* (1854) 18 Beav 462 at 464 per Romilly MR; *Re Dudley* (1883) 12 QBD 44, CA.

8 *De Woolfe v --* (1882) 2 Chit 68. See also *Damodaran s/o Raman v Choe Kuan Him* [1980] AC 497, PC, where, on a contract for the sale of land, the court could not take into consideration the possibility of a future claim by a stranger as a ground for ordering payment into court rather than to the client.

9 See *Ex p Wortham* (1851) 4 De G & Sm 415; *Re Becke* (1854) 18 Beav 462. An order has been withheld until costs have been taxed: *Anon* (1851) 17 LTOS 79. Cf *Re Robinson* (1859) 5 Jur NS 1021.

10 *Re Ford and Thomas* (1840) 8 Dowl 684.

11 *Re Lawrence, Crowdy and Bowlby, ex p Burdon* (1854) 2 Sm & G 367.

12 *Chater v Maclean, Re Lawrence, Crowdy and Bowlby* (1855) 3 Eq Rep 375.

13 *Re A Solicitor* (1878) 22 Sol Jo 496. Cf *Floyd v Nangle* (1747) 3 Atk 568.

14 *Fenn v Wild* (1832) 1 Dowl 498; *Re Cullen* (1859) 27 Beav 51.

15 See under the Supreme Court Act 1981 s 35A, Sch 1 Pt I; replacing the Law Reform (Miscellaneous Provisions) Act 1934 s 3 (repealed); see *Barclay v Harris and Cross* (1915) 85 LJB 115; and cf **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1307.

UPDATE

755 Order to pay money to client

NOTE 5--Jurisdiction also exercisable in the case of any manager or employee of such a body: Administration of Justice Act 1985 Sch 2 para 28 (amended by Legal Services Act 2007 Sch 16 para 114).

NOTE 15--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1.

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756. Defences.

The court will not summarily order a solicitor to pay money when the client's right depends on an agreement which the solicitor disputes¹; or when the client has accepted a promissory note for the amount²; or while the client prosecutes an action against the solicitor for the amount³; or when the client seeks to enforce a claim which has been barred in an action at law⁴, or by the solicitor's adjudication and discharge in bankruptcy⁵; or where the applicant has greatly delayed⁶; or if to fulfil the order would make the solicitor liable to committal for breach of another order⁷. Bankruptcy, however, is no sufficient defence where fraud is shown⁸ or where the solicitor has not obtained his discharge⁹; nor is the fact that the right to recover the money by action is statute-barred¹⁰; nor that judgment has been recovered for the money¹¹; nor that the money is claimed by third persons¹², unless they and the client have concurred in some arrangement with the solicitor¹³; nor that a lien is claimed which the solicitor does not establish¹⁴.

1 *Hodson v Terrall* (1833) 2 Dowl 264.

2 *Anon* (1825) 3 LJOSKB 106.

3 *Anon* (1841) 5 Jur 678.

4 *Sittingbourne and Sheerness Rly Co v Lawson* (1886) 2 TLR 605, CA.

5 *Baron v Martell* (1827) 9 Dow & Ry KB 390; *Ex p Culliford v Warren* (1828) 8 B & C 220. See also *R v Edwards* (1829) 9 B & C 652 (release from custody), although it is questionable whether this case is reliable as the matter is not on quite the same footing as that of an ordinary civil debt. See also note 9.

6 See *Ex p Yeatman* (1835) 4 Dowl 304; and cf note 10.

7 *Re Walmsley* (1835) 2 Ad & El 575.

8 See the Insolvency Act 1986 s 281(3); and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 643; *Re Bonner* (1833) 4 B & Ad 811; *Re --* (1855) 25 LTOS 98; *Jenkins v Fereday* (1872) LR 7 CP 358.

9 See *Re Deere* (1875) 10 Ch App 658; *Re Wray* (1887) 36 ChD 138, CA; *Re Edye* (1891) 63 LT 762. These cases decide that where a solicitor is ordered to pay money and subsequently becomes bankrupt, the court has a discretion to issue a writ of attachment (now an order of committal) for failure to pay. See also *Re Norris* (1917) 33 TLR 309, where the solicitor became bankrupt before the taxing officer (now costs officer) had given his certificate. See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

10 To obtain the order in such a case some misconduct or neglect of duty should be shown: *Ex p Sharpe* (1837) 5 Dowl 717; *Re Triston* (1850) 1 LM & P 74; *Sittingbourne and Sheerness Rly Co v Lawson* (1886) 2 TLR 605, CA. Cf *Ex p Yeatman* (1835) 4 Dowl 304 (delay). As to statute-barred actions see generally **LIMITATION PERIODS** vol 68 (2008) PARA 901 et seq.

11 *Re Grey* [1892] 2 QB 440, CA.

12 *Re Becke* (1854) 18 Beav 462; *Re Emma Silver Mining Co*, *Re Turner* (1875) 24 WR 54 (deeds).

13 See *Re Becke* (1854) 18 Beav 462. However, a voluntary agreement to pay a husband's debt out of his wife's money is not sufficient: *Mawhood v Milbanke* (1851) 15 Beav 36.

14 *Re Cullen* (1859) 27 Beav 51.

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757. Source of money immaterial.

It is immaterial whether the money for which the solicitor must account was received from a third person to be paid to the client or whether it was received from the client to be applied for a purpose which has not been carried out. Thus, the money may have been received by the solicitor from the sheriff as the proceeds of an execution levied on behalf of the client¹, or from a banker as the proceeds of a cheque payable to the client and indorsed to the solicitor for collection², or from a mortgagee as the sum advanced³, or from a mortgagor in repayment of a mortgage held by the client⁴. The money may have been received by the solicitor from the client for application, for instance, to pay into court⁵, or to pay off a mortgage⁶, or it may represent the balance of a sum paid to the solicitor for the expenses of litigation after deducting the whole of the costs incurred⁷.

1 *Ex p Edwards* (1881) 8 QBD 262, CA. Cf *Walker v Pearce, Re An Attorney* (1862) 7 LT 285.

2 *Mawhood v Milbanke* (1851) 15 Beav 36. Cf *Re M* (1878) 1 LR 188 (1r CA).

3 *Ex p Cripwell* (1837) 5 Dowl 689. Cf *Lewes v Morgan* (1817) 5 Price 42.

4 Cf *Re Aitkin* (1820) 4 B & Ald 47.

5 *Re Lawrence, Crowdy and Bowlby, ex p Burdon* (1854) 2 Sm & G 367.

6 *Re Cullen* (1859) 27 Beav 51.

7 *Ex p Wortham* (1851) 4 De G & Sm 415. Cf *Re Parkinson, Re Prosecution by the Treasury, R v Gershon* (1887) 56 LT 715.

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(vi) Liability to Deliver up Clients' Papers

758. Jurisdiction to order delivery up of papers.

Under the inherent jurisdiction of the court over its officers¹ a solicitor² may³ be ordered upon summary application by the client, his personal representatives⁴ or his trustee in bankruptcy⁵, by summons⁶ to deliver up to his client in proper condition⁷ all documents⁸ in the solicitor's custody or power belonging solely⁹ to the applicant¹⁰. Similarly, the court may order a solicitor to produce all documents in his custody, possession or power, relating to an action, and to allow the client to inspect and make notes of them, and to supply the client with such copies as he desires, even though the litigation was conducted under the direction of an insurance company not appearing upon the record¹¹. It is provided by statute that the jurisdiction of the High Court to make orders for the delivery up of, or otherwise in relation to, any documents in the possession, custody or power of a solicitor¹² extends to cases in which no business has been done by him in the High Court¹³. A county court has the same jurisdiction as the High Court where the documents relate wholly or partly to contentious business¹⁴ done by the solicitor in that court¹⁵.

1 The liability here discussed is that of a solicitor under the court's inherent jurisdiction over its officers. This jurisdiction is the same as that discussed, in relation to different relief, in PARA 745 et seq, to which reference may be made, and should be distinguished from the court's jurisdiction upon an assessment of costs under the Solicitors Act 1974: see PARA 968 et seq. The court has jurisdiction summarily to enforce an undertaking to deliver deeds, even if given by a trainee solicitor (see *Re Copp* (1883) 32 WR 25), but the exercise of the jurisdiction is discretionary (*Re A Solicitor* (1888) 33 Sol Jo 76; see also *United Mining and Finance Corp'n Ltd v Becher* [1910] 2 KB 296 at 306, DC). An action in conversion lies for deeds wrongly detained by a solicitor: see *Anderson v Passman* (1835) 7 C & P 193 (detinue); and the Torts (Interference with Goods) Act 1977 s 2 (see **TORT** vol 97 (2010) PARA 543).

2 This includes the executor of a deceased solicitor: cf note 12; but see *Ex p Nicholls* (1842) 2 Dowl NS 423, which is presumably now of no effect.

3 See PARA 755 note 2; *Re Bunting* (1835) 2 Ad & El 467; *Re Gregory and Hitch* (1842) 6 Jur 282.

4 *Re Campbell* (1853) 3 De GM & G 585.

5 *Ross v Laughton* (1813) 1 Ves & B 349; but see PARA 1003 note 3. The decision remains an authority for the proposition in the text.

6 The application will be made by originating or ordinary summons.

7 See *North Western Rly Co v Sharp* (1854) 10 Ex Ch 451.

8 This includes originals, drafts and copies (*Ex p Horsfall* (1827) 7 B & C 528) and letters written to the solicitor by third persons (*Re Thomson* (1855) 20 Beav 545), but not original letters to him written by the client nor, unless paid for by the client, copies of letters written by the solicitor to third persons (*Re Thomson*), or copies of letters written to his client (*Re Wheatcroft* (1877) 6 ChD 97). The expense of preparing a schedule of documents should be borne by the person for whose benefit it is prepared: *Re Catlin* (1854) 18 Beav 508 at 514; *Re RP Morgan & Co* [1915] 1 Ch 182. Cf *Ex p Willand* (1851) 11 CB 544. As to the ownership and use of documents generally see PARA 785.

9 *Ex p Cobeldick* (1883) 12 QBD 149, CA. Cf *Miers v Evans* (1839) 3 Jur 170. Documents have been ordered to be delivered to a majority of several clients who withdrew their retainer: *Janson v Davison* (1837) 1 Jur 352.

An inquiry as to which deeds belonged to one of two joint clients was refused in *Duncan v Richmond* (1817) 7 Taunt 391.

10 *Ex p Cobeldick* (1883) 12 QBD 149, CA; *Re Holloway, ex p Pallister* [1894] 2 QB 163, CA (the procedural question in which case is no longer relevant as the rules of court concerned have been changed). See also the cases cited in note 1.

11 *Re Crocker, Re Taxation of Costs* [1936] Ch 696, [1936] 2 All ER 899. As to drafts of copies see *Ex p Holdsworth* (1838) 4 Bing NC 386; and note 8.

12 'Solicitor' here includes the executors, administrators and assignees of a solicitor: Solicitors Act 1974 s 68(3).

13 Solicitors Act 1974 s 68(1).

14 As to the meaning of 'contentious business' see PARA 933 note 2.

15 Solicitors Act 1974 s 68(2). This jurisdiction is also exercisable in relation to a recognised body: Administration of Justice Act 1985 s 9(6), Sch 2 para 27. As to the meaning of 'recognised body' see PARA 687 note 3.

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759. Professional relationship.

The relationship of solicitor and client must have existed between the applicant, or the person whom the applicant represents, and the solicitor¹. Thus, delivery of papers will not be ordered where the applicant is a trustee and the employment was by a beneficiary²; or where it has already been established that the relationship did not exist³; or where the document is held as trustee, not as solicitor⁴, or has been delivered to the solicitor by someone not his client to obtain his client's execution of it⁵; or of a bond given up to the solicitor of a prosecutor by a person producing it in a cause⁶; or of a will given to a solicitor for destruction upon the application of a legatee⁷; or where the applicant is interested jointly with the client under the document but is not the solicitor's client⁸. The document must have come to the solicitor's hands as solicitor⁹; thus, delivery was not ordered of a policy which the solicitor had effected on the life of a client as security for a debt¹⁰, or of a document which he held as trustee¹¹ or as steward of a manor¹².

1 See *Miers v Evans* (1839) 3 Jur 170; and cases in the next following notes. Cf PARA 755.

2 *Re Gregory and Hitch* (1842) 6 Jur 282, where the other trustee objected.

3 *Ex p Maxwell* (1835) 4 Dowl 87.

4 *Ex p Holdsworth* (1838) 4 Bing NC 386, where the draft was ordered to be delivered, but the case is cited as an authority for the retention of the deed.

5 *Ex p Smart* (1835) 1 Har & W 526.

6 *Ex p Morris* (1837) 1 Jur 151.

7 *Ex p Crisp* (1834) 2 Dowl 455.

8 *Miers v Evans* (1839) 3 Jur 170, where the giving of a copy was not ordered, and it is, therefore, a fortiori in relation to the delivery of the original.

9 *Ex p Cobeldick* (1883) 12 QBD 149 at 151, CA, per Brett MR. See also PARA 755.

10 *Re Lord Cardross* (1839) 5 M & W 545.

11 *Pearson v Sutton* (1814) 5 Taunt 364.

12 See *Re Jennings* [1903] 1 Ch 906. In *Hughes v Mayre* (1789) 3 Term Rep 275, delivery was ordered, but that case lays down no general rule, and principle requires that the general rule be that delivery should not be ordered (see PARA 755 note 2), at any rate in the absence of clearly improper conduct.

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760. Defences.

It is a defence that the solicitor has a lien¹ on the documents², but, where the documents are in the hands of the solicitor's agents (being solicitors), the client, if he has paid the solicitor without notice that the agents have any lien, is entitled to an order for delivery of the documents by the solicitor³, and, it seems, also against the agents⁴. It is a defence that the documents are not in the possession of the solicitor or his agents⁵, but it is not sufficient that the solicitor should have delivered them to an attorney of the client after demand by the client for delivery to him or another agent of his⁶. It has been held to be a sufficient defence that the solicitor had entered into a covenant, given for the client's benefit, to produce the deeds to a third person and to keep the deeds undefaced and that this covenant remained in force⁷. Delivery will not be ordered where to comply with the order would expose the solicitor to proceedings for committal in another court⁸.

1 As to lien generally see **LIEN**.

2 *Re Millard* (1831) 1 Dowl 140; *Ex p Cobeldick* (1883) 12 QBD 149, CA. See generally PARA 247. However, the court may order the documents to be handed over upon the amount of the solicitor's lien being paid into court or otherwise secured (*Re Galland* (1885) 31 ChD 296, CA), and where the costs of a sale, being secured by the lien, were disallowed, the solicitor who had acted for the vendor in the sale was ordered to deliver up the conveyance executed by the vendor (*Potts v Dutton* (1845) 8 Beav 493).

3 *Re Andrew* (1861) 7 H & N 87. Distinguish *Re Williams* (1861) 3 De GF & J 104, CA (cited in note 5), on the ground that a principal solicitor's solicitor agent has no lien against the client in the circumstances mentioned (*Waller v Holmes* (1860) 1 John & H 239; *Vyse v Foster* (1875) 32 LT 219 (affd 23 WR 413)).

4 See *Ex p Edwards* (1881) 8 QBD 262, CA; and PARA 755 note 1.

5 See *Re Williams* (1861) 3 De GF & J 104, CA. However, the proposition follows from that stated in PARA 365.

6 *Re Gregg, Re Prance* (1869) LR 9 Eq 137.

7 *Hotham v Somerville* (1842) 5 Beav 360.

8 *Re Walmsley* (1835) 2 Ad & El 575 (attachment).

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(vii) Liability to Committal

761. Punitive jurisdiction.

An order made against a solicitor in his capacity as an officer of the court is a punitive order, and may¹ be enforced by committal², but it is not an order made in a criminal or quasi-criminal cause or matter³. Thus a solicitor who has been ordered to deliver documents⁴ or to pay costs for misconduct⁵ or to perform an undertaking given by him in his capacity as a solicitor⁶ may be committed for failure to comply with the order⁷. A solicitor who has been ordered, in his character as an officer of the court making the order, to pay a sum of money⁸ may be committed for failure to comply with the order⁹.

Accordingly, leave to apply for committal has been given where the solicitor failed to pay over commission received upon effecting insurance policies (for which commission he was held accountable)¹⁰, where he failed to pay over a balance of the client's money in his hands¹¹, and where he failed to comply with an order to pay the costs of an action brought without authority¹². An order for payment of a balance due from a solicitor on assessment by his client, including the taxation of costs (now assessment)¹³, is an order against the solicitor in his character of an officer of the court and accordingly may be enforced by committal¹⁴ even though the solicitor is bankrupt¹⁵, and even though he has ceased to be a solicitor¹⁶. Similarly, where the order for taxation (now assessment) is obtained by a solicitor against his agent, the payment of the costs of taxation (now assessment) may be enforced by committal¹⁷, but the payment of money in the hands of the agent on account of the principal, although enforceable by committal, is so enforceable on different grounds¹⁸.

A partner in a firm of solicitors which is in course of dissolution is not liable to be committed for failure to pay over a sum of money which he has received on account of the firm¹⁹, nor is a solicitor liable to be committed for failure to pay costs which he is directed to pay as a litigant, and not as an officer of the court²⁰.

1 In cases within the Debtors Act 1869 s 4 paras 3, 4, the court has a discretion under the Debtors Act 1878 s 1: see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 485, 522.

2 *Re Freston* (1883) 11 QBD 545, CA; *Re Dudley* (1883) 12 QBD 44, CA, explaining *Re Ball* (1873) LR 8 CP 104. Cf *Re Apelt, ex p Byrne* (1889) 6 Morr 102. In earlier days the liability was to attachment, but, although not actually abolished, attachment is now obsolete: see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 491. As to committal generally see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 493, 502.

3 *Godfrey v George* [1896] 1 QB 48, CA; *Seldon v Wilde* [1911] 1 KB 701, CA (cases showing that an action may lie upon such an order for costs to be paid). An appeal lies from such an order to the Court of Appeal: *Re Hardwick* (1883) 12 QBD 148, CA; *Re Bradford* (1883) 15 QBD 635, CA, where it was held that the appeal lay without leave from an order made at chambers. See generally *Scott v Scott* [1913] AC 417 at 459-461, HL. As to appeal in cases of committal for contempt see the Administration of Justice Act 1960 s 13; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 512 et seq.

4 As to the delivery of clients' papers see PARA 758 et seq.

5 As to the liability to pay costs see PARAS 753, 879 et seq. As to committal generally see **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 472 et seq.

6 *United Mining and Finance Corpn Ltd v Becher* [1910] 2 KB 296, DC.

7 As to deeds see *Re Dicas* (1831) 9 LJOS Ch 183 (demand needed); *Doe d Hickman v Hickman* (1840) 8 Dowl 833; *Ex p Willand* (1851) 11 CB 544; *Re Gregg, Re Prance* (1869) LR 9 Eq 137; *Re Freston* (1883) 11 QBD 545, CA. As to costs see *Tilney v Stansfeld* (1880) 28 WR 582; *Farley v Buckler* (1893) Times, 30 October. The matter is within the Debtors Act 1869 s 4 para 1.

8 As to the liability to pay over clients' money see PARA 755 et seq.

9 Debtors Act 1869 s 4 para 4; Debtors Act 1878 s 1; and **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 485, 522.

10 *Re Lord Berwick, Lord Berwick v Lane* (1900) 81 LT 797, CA.

11 *Re Dudley* (1883) 12 QBD 44, CA. Where the solicitor becomes bankrupt after the date of the order to pay but before the application to commit is made, the court has a discretion to refuse the committal: see PARA 756 note 9. A discharge in bankruptcy for a liability not incurred for fraud constitutes a defence: see PARA 756.

12 *Jenkins v Fereday* (1872) LR 7 CP 358.

13 *Re A Solicitor* [1895] 2 Ch 66; *Re Norris* (1917) 33 TLR 309. The matter is within the Debtors Act 1869 s 4 para 4.

14 *Re Rush* (1870) LR 9 Eq 147; *Re White* (1870) 23 LT 387; *Re Barfield* (1871) 24 LT 248. See also the cases cited in note 13.

15 *Re Norris* (1917) 33 TLR 309. See also *Re A Solicitor* [1895] 2 Ch 66.

16 *Re Strong* (1886) 32 ChD 342, CA.

17 See *Re Wilde (a solicitor)* [1910] WN 128, CA; and the cases cited in note 13.

18 *Litchfield v Jones* (1887) 36 ChD 530, where the action was for an account and the order directed payment into court. The application was not for taxation (now assessment), and it was held that the matter was within the Debtors Act 1869 s 4 para 3. The payment may also perhaps be enforceable under s 4 paras 3, 4: see *Re Farman, ex p Truman* (1897) 14 TLR 20, DC; *Re Wilde (a solicitor)* [1910] WN 128, CA.

19 *Piddocke v Burt* [1894] 1 Ch 343. The matter is not within the Debtors Act 1869 s 4 para 3.

20 *Re Hope* (1872) 7 Ch App 523. The matter is not within the Debtors Act 1869 s 4 para 4.

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762. Procedure.

Application for leave to apply for committal must be made on notice to the solicitor¹, and the right to the order may be lost by conduct amounting to waiver after the order has been made².

¹ *Re A Solicitor* (1875) 1 ChD 445; CPR Sch 1 RSC Ord 52 r 3(3). See **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 493 et seq.

² *Harvey v Hall* (1873) LR 16 Eq 324, where the making of arrangements for payment by instalments constituted a waiver; *Re Fereday* [1895] 2 Ch 437, where giving time and accepting part payment did not constitute a waiver. See generally **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 462.

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(6) SOLICITOR AND CLIENT

(i) Retainer

A. DEFINITION AND FORM OF RETAINER

763. Meaning of 'retainer'.

The act of authorising or employing a solicitor to act on behalf of a client constitutes the solicitor's retainer by that client. Thus the giving of a retainer is equivalent to the making of a contract for the solicitor's employment, and the rights and liabilities of the parties under that contract will depend partly on any terms which they have expressly agreed, partly on the terms which the law will infer or imply in the particular circumstances with regard to matters on which nothing has been expressly agreed, and partly on such statutory provisions as are applicable to the particular contract. As a general rule, a person has the right to retain the solicitor of his choice, provided the solicitor is willing to act and is not precluded by the law or by professional rules from so doing¹. By the giving and acceptance of the retainer the solicitor acquires his authority to act for and bind the client, and the client becomes bound both personally as between himself and his solicitor² and as between himself and third persons with whom the solicitor deals within the limits of his authority on behalf of his client³.

A solicitor is generally free to decide whether or not to take on a particular client unless it would involve him in a breach of the law or a breach of the rules of professional conduct or he does not have sufficient resources or competency to deal with the matter⁴. Where instructions have been given by a third party, or by someone on behalf of himself and others, a solicitor must not proceed until first checking that all clients agree with the instructions given⁵.

Also where a solicitor knows or has reasonable grounds to believe that the instructions are affected by duress or undue influence he must not act until satisfied that the instructions represent the client's wishes⁶.

Solicitors may publicise their practices and may accept introductions of clients and referrals of business, but all these matters are subject to the Solicitors' Code of Conduct 2007⁷.

1 In *Oswald Hickson Collier & Co v Carter-Ruck* [1984] AC 720n, [1984] 2 All ER 15, CA, it was held in the particular circumstances to be contrary to public policy to prevent a solicitor from acting for a client who wanted him to act, in reliance on a restraint of trade clause in the partnership deed. See also *Edwards v Worboys* [1984] AC 724n, CA. Commercial institutions wishing to impose absolute liability on solicitors must do so in clear terms, so that the extent of the obligation can be appreciated: *Midland Bank v Cox McQueen (a firm)* [1999] 1 FLR 1002, CA. See also *UCB Corporate Services Ltd v Clyde & Co (a firm)* [2000] 2 All ER (Comm) 257, CA.

2 The client's liability for costs does not extend to the costs of work done without authority before the retainer, unless there is a special agreement to that effect: see eg *Re Watson, ex p Phillips* (1886) 18 QBD 116; affd (1887) 19 QBD 234, CA (work done before appointment of administrator for person intermeddling with the estate). Where, however, a solicitor acts for a client with the client's authority, the presumption is that the client is liable for the solicitor's costs: see *Bolden v Nicholay* (1857) 3 Jur NS 884; *Adams v London Improved Motor Coach Builders Ltd* [1921] 1 KB 495, CA.

3 See **AGENCY** vol 1 (2008) PARA 121 et seq.

- 4 See the Solicitors' Code of Conduct 2007 r 2.01(1)(a), (b).
- 5 See the Solicitors' Code of Conduct 2007 r 2.01(1)(c).
- 6 See the Solicitors' Code of Conduct 2007 r 2.01(1)(d).
- 7 See PARA 830 et seq.

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764. Relationship established by retainer.

The relationship between solicitor and client is a fiduciary one¹, but it does not follow that a solicitor is in all respects a trustee in relation to his client. There is no such thing as a general retainer imposing a duty on the solicitor to consider all aspects of the client's interests generally². Ordinarily the relationship between solicitor and client is that of agent and principal and therefore time will run against the client in respect of money left in his solicitor's hands³. However, special circumstances, as where money is paid by the client to his solicitor for a particular purpose, may constitute the solicitor a trustee of that money in relation to the client⁴, so that time will not run against the client to preclude his recovery of money not applied for the particular purpose⁵.

1 See eg *Re Van Laun, ex p Chatterton* [1907] 2 KB 23 at 29, CA, per Cozens-Hardy MR. See also *Oswald Hickson Collier & Co v Carter-Ruck* [1984] AC 720n, [1984] 2 All ER 15, CA. As to a person in a confidential position as fiduciary see **EQUITY** vol 16(2) (Reissue) PARA 854.

2 See *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384, [1978] 3 All ER 571. See also *John Mowlem Construction plc v Neil F Jones & Co* [2004] EWCA Civ 768, [2004] BLR 387 (question of fact whether solicitors in breach of professional obligation to client in relation to questions of insurance).

3 *Re Hindmarsh* (1860) 1 Drew & Sm 129; *Watson v Woodman* (1875) LR 20 Eq 721. Cf *Friend v Young* [1897] 2 Ch 421 at 432.

4 As to payment for a particular purpose constituting the payee a fiduciary see *Barclays Bank Ltd v Quistclose Investments Ltd* [1970] AC 567, [1968] 3 All ER 651, HL; and **TRUSTS** vol 48 (2007 Reissue) PARA 711.

5 See the Limitation Act 1980 s 21(1); and cf **LIMITATION PERIODS** vol 68 (2008) PARA 1140 et seq. Regard must be had to the solicitor's obligations to keep separate accounts of clients' money, so that all money in such an account may in some sense be trust money (*Plunkett v Barclays Bank Ltd* [1936] 2 KB 107 at 117, [1936] 1 All ER 653 at 657: see also PARA 835 et seq), and it is property held on trust for another person within the Insolvency Act 1986 (*Re A Solicitor* [1952] Ch 328, [1952] 1 All ER 133: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 428).

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765. Form of retainer.

A retainer need not be in writing¹, unless, under the general law of contract, the terms of the retainer or the disability of a party to it make writing requisite, for example where the retainer really amounts to a contract of guarantee². However the following matters must be provided in writing:

- 998 (1) the name and status of the person dealing with the matter³;
- 999 (2) the name of the person responsible for overall supervision⁴;
- 1000 (3) any information about the cost⁵;
- 1001 (4) if the retainer is to provide for payment by a salary or agreed sum, writing will be necessary in respect of the provisions for remuneration⁶;
- 1002 (5) details that in the event of a problem the client is entitled to complain and to whom the client should complain⁷.

It has been said that it is the duty of a solicitor to obtain a written authority from his client before commencing a suit⁸, and certainly it is desirable for the sake of both solicitor and client that the retainer should be reduced into writing, so that its terms may be perfectly clear and beyond dispute⁹, particularly where the original retainer has been revoked by writing, and subsequently a new retainer has been given¹⁰. Indeed, if there is no evidence of retainer except a statement by the solicitor which the client contradicts the court will treat the solicitor as having acted without authority from the client¹¹. This applies not only to litigious but also to non-contentious business¹².

1 *Owen v Ord* (1828) 3 C & P 349; *Wiggins v Peppin* (1839) 2 Beav 403; *Bird v Harris* [1881] WN 5, CA. Retainers by corporations may also be given orally on their behalf: see PARA 772. Certain matters are required to be confirmed to the client in writing: see the Solicitors' Code of Conduct 2007 rr 2.02, 2.03, 2.05.

2 *Tomlinson v Gell* (1837) 6 Ad & El 564. See also **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1052. Certain information such as costs must be in writing: see the Solicitors' Code of Conduct 2007 r 2.03(5); and PARA 932. See also PARA 815.

3 See the Solicitors' Code of Conduct 2007 r 2.02(2)(d); and PARA 815.

4 See the Solicitors' Code of Conduct 2007 r 2.02(2)(d); and PARA 815.

5 See the Solicitors' Code of Conduct 2007 r 2.03(5); and PARA 932.

6 See the Solicitors Act 1974 ss 57(2), (3), 59; and PARAS 942, 945. As to the remuneration of solicitors see PARA 931 et seq.

7 See the Solicitors' Code of Conduct 2007 r 2.05(1)(b); and PARA 887.

8 *Allen v Bone* (1841) 4 Beav 493, per Lord Langdale MR. See also *Wright v Castle* (1817) 3 Mer 12; *Re Gray, Gray v Coles* (1891) 65 LT 743. In practice the fact of authority will be evidenced by and inferred from correspondence between the solicitor and the client rather than by a formal written authority.

9 *Owen v Ord* (1828) 3 C & p 349 per Lord Tenterden CJ. Cf *Armstrong, Taylor and Whittaker v Oldham Corpn* [1937] 2 All ER 577, where the argument turned on the question whether the letter of retainer was so uncertain as to be unenforceable.

10 *Re Hincks* [1867] WN 291.

11 *Allen v Bone* (1841) 4 Beav 493 per Lord Langdale MR; *Crossley v Crowther* (1851) 9 Hare 384. See also *Wilson v Wilson* (1820) 1 Jac & W 457; *Re Wooding, ex p Coates and Hammond* (1834) 3 Deac & Ch 626; *Wiggins v Peppin* (1839) 2 Beav 403; *Atkinson v Abbott* (1855) 25 LTOS 314; *Re Gray, ex p Incorporated Law Society* (1869) 20 LT 730; *Bird v Harris* [1881] WN 5, CA. Other circumstances, such as the nature of a deed executed by the client in the course of the transaction, may be very material: see *Moore v Prance* (1851) 9 Hare 299.

12 *Re Paine* (1912) 28 TLR 201. As to the authority required for non-contentious business see PARA 787 et seq.

UPDATE

765 Form of retainer

NOTE 1--Solicitors' Code of Conduct 2007 r 2.05 amended on 31 March 2009, 31 March 2010.

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766. Oral appointment.

There are few circumstances in which agents must be appointed by deed¹, and however desirable it may be that the appointment of solicitors should be in writing², so that the fact of agency and extent of the authority should be clearly ascertainable, the law does not require formal evidence³.

1 As to when a deed is necessary see **AGENCY** vol 1 (2008) PARA 15.

2 See PARA 765.

3 *Owen v Ord* (1828) 3 C & P 349; *Lord v Kellett* (1833) 2 My & K 1; *Wiggins v Peppin* (1839) 2 Beav 403; *Rowe v Ward* (1844) 4 LTOS 191. The onus lies upon a solicitor of proving his appointment (*Maries v Maries* (1853) 23 LJ Ch 154; *John Griffiths Cycle Corpn Ltd v Humber & Co Ltd* [1899] 2 QB 414, CA), and he may be liable for costs if he fails to prove his appointment (*Norton v Cooper, Re Manby and Hawksford, ex p Bittleston* (1856) 26 LJ Ch 313).

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767. Implied retainer.

Even if there has been no written retainer, the court may imply the existence of a retainer from the acts of the parties in the particular case¹. Thus, where a person has received a fund out of court which was produced by an action², or where a person about to become a trustee has consented to solicitors acting in a mortgage transaction for the trust³, or where a defendant called at a solicitor's office and left the writ and other papers and subsequently expressed an intention to go to the bottom of the matter⁴, a retainer was constituted. The mere fact that a litigant whose name a solicitor has joined as a claimant without obtaining authority to do so does not take steps to have his name removed from the record on becoming aware that he has been joined as claimant is not by itself necessarily sufficient to justify an inference that the solicitor is retained by the litigant⁵, although little may be needed in addition to justify that inference⁶. However, such acquiescence will suffice to render the litigant liable to the other side for costs which he may be ordered to pay to them in the litigation⁷. Where, however, property has been recovered or preserved in legal proceedings, including arbitrations, through the instrumentality of a solicitor, he may be entitled to a lien or to obtain a charging order on that property in respect of his costs of its recovery or preservation, even though he was not authorised to act on behalf of some of the persons to whom the property belongs⁸.

1 *Allen v Bone* (1841) 4 Beav 493; *Morgan v Blyth* [1891] 1 Ch 337 at 355.

2 *Gray v Wainman* (1823) 7 Moore CP 467; *Re Becket, Purnell v Paine* [1918] 2 Ch 72 at 80, CA.

3 *Blyth v Fladgate* [1891] 1 Ch 337 at 357-359.

4 *Parrott v Echells* (1839) 3 JP 771.

5 *Hall v Laver* (1842) 1 Hare 571 at 575-576. In considering this decision it is important to note that the costs then in question were not the costs of the suit, but of general business.

6 See *Reynolds v Howell* (1873) LR 8 QB 398 at 400 per Blackburn J, and *Re Becket, Purnell v Paine* [1918] 2 Ch 72 at 80-81, CA, per Swinfen Eady LJ.

7 *Hall v Laver* (1842) 1 Hare 571 at 576. So, too, the litigant may be held to have enabled the solicitor to bind the litigant as against third persons in matters within the apparent authority of the solicitor.

8 See *Hall v Laver* (1842) 1 Hare 571 at 576, as explained in *Re Becket, Purnell v Paine* [1918] 2 Ch 72 at 76, CA. As to liens and charging orders see PARA 996 et seq; and cf PARA 1018 note 7.

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B. RETAINER BY PARTICULAR PERSONS

768. Retainer by agents etc.

As a general rule a person, even if he is receiving legal aid¹, has the right to choose whom he will employ as his solicitor². Conversely, a person has no authority, unless specially authorised, to retain a solicitor to act on another person's behalf³. This authority may, however, be expressly conferred⁴, or may be implied from the relations between the parties⁵. Thus a partner, even although dormant and retiring from the firm before completion of the work charged for, may be liable to a solicitor for costs incurred in suing a debtor to the firm on the instructions of the only active partner⁶, and the managing partner of a business firm may employ a solicitor to defend an action against the firm for goods supplied in the ordinary course of business⁷.

A person by contract or conduct may confer power on another to appoint a solicitor to act at the appointer's expense for the litigant⁸. Where the client has conferred on a third person authority to control the conduct of the matter, the solicitor may act on the instructions of that person in regard to matters which are clearly within the authority so conferred; and, even though he may be paid by the third person, the solicitor is otherwise liable to the client to the same extent and in the same respects as he would be if he were being paid by the client⁹. The adoption of work done on behalf of a client without authority may amount to a ratification and retainer¹⁰.

1 As to the right of a legally assisted person to select his own legal representative, and the limitations on that right, see **LEGAL AID** vol 65 (2008) PARA 162.

2 *Watts v Official Solicitor* [1936] 1 All ER 249, CA. Alien enemies who are directors of a company incorporated in England may not retain a solicitor on the company's behalf: *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307, HL. See also *Oswald Hickson Collier & Co v Carter-Ruck* [1984] AC 720n, [1984] 2 All ER 15, CA.

3 *Chivers v Fenn* (1681) 2 Show 161; *Roe v Doe* (1736) Barnes 39; *Wiggins v Peppin* (1839) 2 Beav 403. As to a solicitor's liability on breach of warranty of authority if he acts on invalid instructions see *Yonge v Toynbee* [1910] 1 KB 215, CA; and PARA 796.

4 *Pickford v Ewington* (1835) 4 Dowl 453; *Heinrich v Sutton, Re Fiddey* (1871) 6 Ch App 220 (revsd on another point 6 Ch App 865); *May v Sherwin* (1883) 27 Sol Jo 278, CA. On the death of a litigant and the appointment of a person to represent his estate, the person appointed is entitled to employ his own solicitor, although, it seems, the deceased would not have been so entitled: see *Watts v Official Solicitor* [1936] 1 All ER 249, CA. An authority to act generally, conferred orally or in writing on an agent, includes authority to instruct a solicitor: *Re Frampton, ex p Frampton* (1859) 1 De GF & J 263, CA.

5 For instances justifying this proposition see the text and notes 6-7. However, it is material to notice that a solicitor who is retained is not thereby authorised to retain another solicitor in his place on the client's behalf (*Re Becket, Purnell v Paine* [1918] 2 Ch 72, CA), although in accordance with usage a solicitor may be impliedly authorised to employ a London or local agent (see PARA 1022).

6 *Court v Berlin* [1897] 2 QB 396, CA.

7 *Tomlinson v Broadsmith* [1896] 1 QB 386, CA. See also *Court v Berlin* [1897] 2 QB 396, CA.

8 For example, a trade union may appoint a solicitor on behalf of a member to conduct proceedings on the member's behalf with the member's consent, and, even though the union agrees to be responsible for costs, the member remains responsible also in the absence of an express agreement excluding this responsibility, so

that costs are recoverable by him in the proceedings: see *Adams v London Improved Motor Coach Builders Ltd* [1921] 1 KB 495, CA. So also an insurance company may employ a solicitor to act for an insured person, either because the company is the real litigant and is going to bear the cost, or under an express term in the policy: *Walsh v Julius* (1927) Times, 13 July; *Luck v Meyler* (1928) 72 Sol Jo 337; *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394, CA. Cf *Heinrich v Sutton, Re Fiddey* (1871) 6 Ch App 220 at 224; *Baillie v Nevile* (1920) 149 LT Jo 300.

9 See *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394, CA. See *Al-Sabah v Ali* [1999] All ER (D) 49, (1999) Independent, 27 January (solicitor's duty to confirm that he has actually been instructed by the client).

10 See *Terrell v Hutton* (1854) 4 HL Cas 1091 at 1099 per Lord Cranworth. However, there can be no ratification unless the principal is in existence when the work is done: see **AGENCY** vol 1 (2008) PARA 61.

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769. Joint and several retainers.

Retainers by two or more persons may be either joint or several, depending upon the intention of the parties and the nature of the business¹. In the former case each party is liable for the whole of the costs incurred for the benefit of himself or any of the other parties to it², while in the latter case each party is only liable for his proportion of the costs incurred on behalf of all³. Where, however, a retainer joint in form is in fact joint and several, and the work done enures for the benefit of all, for instance in a partition suit, each party to it will be liable for the whole costs incurred⁴.

1 See eg *Hall v Meyrick* [1957] 2 QB 455, [1957] 2 All ER 722, CA, where a man and woman who had lived together for 15 years instructed a solicitor to prepare wills conferring mutual benefits, and there were held to be several retainers. Duties are owed and must be discharged to each and every client; a solicitor is only entitled to communicate with and take instructions from a single member of joint clients if he has the authority of the other clients to do so: *Farrer v Copley Singleton* (1997) 76 P & CR 169, CA.

2 *Burridge v Bellew* (1875) 32 LT 807.

3 *Re Colquhoun, ex p Ford* (1854) 5 De GM & G 35; *Re Allen, Davies v Chatwood* (1879) 11 ChD 244; *Ellingsen v Det Skandinaviske Co* [1919] 2 KB 567, CA; *Keen v Towler* (1924) 41 TLR 86.

4 *Furlong v Scallan* (1875) 9 IR Eq 202. As to partition actions see **REAL PROPERTY** vol 39(2) (Reissue) PARA 216 et seq.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(i) Retainer/B. RETAINER BY PARTICULAR PERSONS/770. Retainer by minor.

770. Retainer by minor.

A retainer given by a minor has no legal effect¹ unless the services to be rendered under it are necessities². Thus, the preparation or settlement of the terms of a proper marriage settlement may properly be undertaken on a retainer by a minor³.

¹ *Biddell v Dowse* (1827) 6 B & C 255; *Oliver v Woodroffe* (1839) 4 M & W 650; *Walkden v Hartley and Cavell* (1886) 2 TLR 767. A next friend is liable for costs incurred on behalf of a minor: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1429. A guardian ad litem is not usually liable for costs: see **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1431. The solicitor acting for a claimant who is a minor suing by a next friend has for his client the next friend, not the minor: *Almack v Moore* (1878) 2 LR Ir 90 at 93.

² As to necessities see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARAS 18-21.

³ *Helps v Clayton* (1864) 17 CBNS 553. As to marriage settlements see **SETTLEMENTS** vol 42 (Reissue) PARA 603.

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771. Retainer by mentally disordered person.

A person suffering from mental disorder which prevents him from understanding what he is doing cannot enter into a contract or appoint an agent¹, and therefore cannot give a retainer to a solicitor. However, if he purports to do so he may incur quasi-contractual obligations to the solicitor², and in any case, if it thinks fit, the Court of Protection may validate the contract of retainer³.

The authority of a solicitor under a retainer given by a client before becoming mentally disordered ceases as soon as the client becomes mentally disordered⁴, and it is immaterial whether or not the solicitor was aware of the incapacity⁵.

1 See **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 601, 606.

2 In so far as the retainer may be shown to be a contract for necessities, he may be liable to pay the solicitor: see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 604.

3 As to the power of the Court of Protection to carry out contracts see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 605. As to solicitors' authority to act for patients see *Practice Direction (Court of Protection)* (1995) 145 NLJ 1403.

4 See *Yonge v Toynbee* [1910] 1 KB 215, CA; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 633. As to the manner in which persons mentally disordered within the meaning of the Mental Health Act 1983 may bring and defend proceedings see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 632 et seq.

5 *Yonge v Toynbee* [1910] 1 KB 215, CA. As to the courts' power to order a solicitor to pay costs if he has improperly continued proceedings after his client has become mentally disordered see PARA 884 note 3. Where a receiver is appointed (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 704 et seq), he is not liable personally for costs to the solicitor he retained: *Re EG* [1914] 1 Ch 927, CA.

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772. Retainer by corporation.

A corporation is entitled to retain a solicitor¹. The retainer need not be under the corporate seal². Formerly the retainer had, strictly speaking³, to be by writing under the common seal⁴, although a confirmation of the retainer by a subsequent resolution under seal sufficed⁵. In such cases the corporation was liable to the solicitor for the costs and expenses incurred under the retainer⁶. A retainer in fact, although not under seal, enabled the solicitor to bind the corporation as regards third persons in matters within his ostensible authority⁷. It might also give the solicitor a lien over the papers of the corporation in his possession⁸, and render the corporation liable to him for his costs for work done⁹.

If the corporation is not bound by the retainer, individual members of the corporation who actively join in the appointment may be personally liable¹⁰.

The rights of a solicitor employed in the promotion of a company as regards the recovery of his costs and expenses from the promoters of the company, or the company itself when formed, are discussed elsewhere in this work¹¹.

1 *Lewis v Rochester Corpn* (1860) 9 CBNS 400; *A-G v Brecon Corpn* (1878) 10 ChD 204. As to the appointment of a solicitor at a salary see PARA 779.

2 See the Corporate Bodies' Contracts Act 1960 s 1 (enabling corporations to contract merely by writing or parol where private persons may so contract); and **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1122. The use of the seal is not, however, prohibited: see s 1(4); and **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1272. The Act does not apply to companies formed and registered under the Companies Act 1985 (see the Corporate Bodies' Contracts Act 1960 s 2; and **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1261), but corresponding provision in regard to such companies is made by the Companies Act 1985 ss 36, 36A (see **COMPANIES** vol 14 (2009) PARA 282 et seq).

3 This was subject to exception if the corporation by the express terms of its constitution was enabled to contract without using its seal: see *R v Cumberland Justices* (1848) 17 LJQB 102; and **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1274.

4 *Arnold v Poole Corpn* (1842) 4 Man & G 860. Cf *Charles P Kinnell & Co v Harding, Wace & Co* [1918] 1 KB 405 at 412-413, CA. As to the use of the seal generally see **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1274.

5 *Brooks, Jenkins & Co v Torquay Corpn* [1902] 1 KB 601.

6 *Lewis v Rochester Corpn* (1860) 9 CBNS 400.

7 *Faviell v Eastern Counties Rly Co* (1848) 2 Exch 344.

8 *Newington Local Board v Eldridge* (1879) 12 ChD 349, CA.

9 See **CORPORATIONS** vol 9(2) (2006 Reissue) PARA 1269 et seq.

10 *Robinson v Price* (1886) 2 TLR 242, where churchwardens were held to be personally liable.

11 See generally **COMPANIES** vol 14 (2009) PARAS 63, 274, 611. Cf PARA 878.

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773. Retainer by clubs and other unincorporated bodies.

Unincorporated bodies such as clubs and learned societies cannot, although purporting to act in a corporate capacity, enter into a contract of retainer upon which they may be sued as an entity by the solicitor; the members of the committee or other persons who retain the solicitor are alone responsible for his charges, and he must look directly to them¹.

¹ See *Fleming v Hector* (1836) 2 M & W 172; *Jones v Hope* [1880] WN 69, CA; and **CLUBS** vol 13 (2009) PARA 266 et seq.

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774. Retainer by trustees and executors.

Trustees and executors can jointly retain and appoint a solicitor to act for them in matters with which they are concerned in their fiduciary capacity. They are personally liable upon the retainer¹, unless they expressly contract that the solicitor is to look only to the estate for his costs², but are entitled to an indemnity from the estate in respect of costs properly incurred³. The retainer should be given by all the trustees or executors, since a retainer by one does not bind the rest in the absence of express authority⁴. A direction in a will to employ a particular solicitor does not bind the executors or trustees to employ him any longer than they wish⁵.

1 *Stanier v Evans, Evans v Stanier* (1886) 34 ChD 470 at 477 per North J. A solicitor so employed cannot usually be made to account for his remuneration as a constructive trustee. See also **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARAS 468-469.

2 *Blyth v Fladgate* [1891] 1 Ch 337 at 359 per Stirling J.

3 *Cotterell v Stratton* (1872) 8 Ch App 295 at 302; *Stott v Milne* (1884) 25 ChD 710, CA. The solicitor is not entitled to claim against the trust property directly: *Stanier v Evans, Evans v Stanier* (1886) 34 ChD 470; but cf *Re Raybould, Raybould v Turner* [1900] 1 Ch 199. In addition, the solicitor has no better right to payment from the estate than the client, and therefore, if the client owes money to the estate and accordingly cannot receive money from it until the debt is paid, the solicitor's right to look to the estate is also subject to this limitation unless he can obtain a charging order: see *Re Cockrell's Estate* [1911] 2 Ch 318 at 323 per Neville J. Where several executors or trustees employ the solicitor and one is a debtor to the estate, only the proportion of costs attributable to the other executor is allowed out of the estate as exempt from the principle last-mentioned: *Smith v Dale* (1881) 18 ChD 516 (executors); *McEwan v Crombie* (1883) 25 ChD 175. See also **EXECUTORS AND ADMINISTRATORS; TRUSTS** vol 48 (2007 Reissue) PARA 1004.

4 *Wiggins v Peppin* (1839) 2 Beav 403; *Luke v South Kensington Hotel Co* (1879) 11 ChD 121, CA; *Brazier v Camp* (1894) 9 R 852, CA. A solicitor employed to receive trust money is liable if he pays the money to one trustee only, who subsequently misappropriates it: *Lee v Sankey* (1873) LR 15 Eq 204.

5 *Foster v Elsley* (1881) 19 ChD 518; see **TRUSTS** vol 48 (2007 Reissue) PARA 1001. An authority in a will to a solicitor acting as executor to make professional charges is a legacy: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 43. The legacy fails if the solicitor is an attesting witness to the will, unless his beneficial interest could not be predicated at the time of the attestation: see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 43; and *Re Royce's Will Trusts, Tildesley v Tildesley* [1959] Ch 626, [1959] 3 All ER 278, CA. See also PARA 813 note 1.

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775. Retainer by trustee in bankruptcy.

A trustee in bankruptcy may employ a solicitor for the purposes of, or in connection with, any of his statutory powers¹; but if the trustee is not the official receiver² he must, when he employs a solicitor, give notice to the creditors' committee³ of the exercise of this power⁴. It is the trustee who is the solicitor's client and who is liable to the solicitor. By virtue of this liability the solicitor's costs properly incurred may be payable out of the estate because the trustee will be entitled to be indemnified out of it, but the solicitor's right is no greater than his client's, and therefore if the trustee has been guilty of such misconduct as to deprive him of his indemnity the solicitor cannot recover costs out of the estate⁵. Costs payable out of the bankrupt's estate must be assessed unless otherwise agreed between the responsible insolvency practitioner and the person entitled to payment, and must in any case be assessed if the creditor's committee so resolves⁶.

A solicitor whose partner or legal executive is on the creditors' committee should not accept a retainer⁷.

1 See the Insolvency Act 1986 s 314(5), Sch 5 para 14(e); and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 462. As to the trustee in bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 316 et seq.

2 As to the official receiver see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 31 et seq, 262 et seq, 323.

3 As to the creditors' committee see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 328 et seq.

4 See the Insolvency Act 1986 s 314(6)(b); and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 460.

5 *Re Pooley, ex p Harper* (1882) 20 ChD 685 at 687, 694, CA. Cf PARA 774 note 3.

6 See the Insolvency Rules 1986, SI 1986/1925, r 7.34(1), (2); and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 807.

7 *Re Gallard, ex p Gallard* [1896] 1 QB 68.

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776. Retainer by liquidator.

A liquidator may appoint a solicitor to assist in the performance of the liquidator's duties in any winding up¹. In a creditors' voluntary winding up, however, he may not do so during the period before the holding of the creditors' meeting² except with the sanction of the court³, and where the company is being wound up by the court and the liquidator is not the official receiver, then if he appoints a solicitor to assist him in carrying out his functions he must give notice to the liquidation committee of that exercise of his powers⁴.

The liquidator is not personally responsible to the solicitor for his costs⁵, but the best course is to stipulate at the time of appointing the solicitor that he is to look only to the assets for his costs⁶. If the liquidator is a solicitor and employs his own firm, or any partner in it, to act on behalf of the company, profit costs must not be paid unless this is authorised by the liquidation committee, the creditors or the court⁷.

The solicitor's retainer is not revoked by the removal of the liquidator who retained him⁸.

¹ See the Insolvency Act 1986 ss 165(3), 167(1)(b), Sch 4 para 12; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 577.

² In the creditors' meeting under the Insolvency Act 1986 s 98: see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 945.

³ See the Insolvency Act 1986 s 166(2); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 961.

⁴ See the Insolvency Act 1986 s 167(2)(b); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 579. The exercise of the liquidator's powers in a winding up by the court is in any event subject to the control of the court, and any creditor or contributory may apply to the court with respect to any exercise or proposed exercise of any of those powers: see s 167(3); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 580.

⁵ *Re Anglo-Moravian Hungarian Junction Rly Co, ex p Watkin* (1875) 1 ChD 130, CA. The case of a trustee in bankruptcy is to be distinguished on the ground that the assets are vested in such a trustee but are not vested in a liquidator. It has been said that there is no such office as solicitor to the liquidator (*Re London Metallurgical Co* [1897] 2 Ch 262 at 269 per Vaughan Williams J), and accordingly that description should not be used. As to the priority of payment of expenses see the Insolvency Rules 1986, SI 1986/1925, r 4.218(1); *Re Massey, Re Freehold Land and Brickmaking Co* (1870) LR 9 Eq 367 at 369; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 810.

⁶ Cf *Re Hermann Loog Ltd* (1887) 36 ChD 502.

⁷ See the Insolvency Rules 1986 r 4.128(3); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 582.

⁸ *R v Lord Mayor of London, ex p Boaler* [1893] 2 QB 146, DC.

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777. Retainer by administrative receiver.

An administrative receiver appointed by debenture holders or the trustees under a debenture has power¹ to appoint a solicitor to assist him in the performance of his functions². An administrative receiver is deemed to be the company's agent unless and until the company goes into liquidation³. An administrative receiver is personally liable on any contract entered into by him and is entitled to an indemnity out of the assets of the company⁴.

1 Unless, in the case of an administrative receiver, that power is inconsistent with any of the provisions of the debentures by virtue of which he was appointed: see the Insolvency Act 1986 s 42(1); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 396.

2 See Insolvency Act 1986 ss 14(1), 42(1), Sch 1 para 4; and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 312.

3 See the Insolvency Act 1986 s 44(1)(a); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 402.

4 See the Insolvency Act 1986 s 44(1)(b), (c); and **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 402.

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C. NATURE AND DURATION OF RETAINER

778. Period of retainer.

The general rule is that when retained by a client a solicitor undertakes to finish the business for which he is retained¹. Thus, a retainer is, speaking generally, an entire contract, that is to say, a contract to do certain business², to finish that business, and to be remunerated at the completion of the business. The consequence is that remuneration cannot be recovered on a quantum meruit where the solicitor withdraws without legal justification³, nor, of course, can costs be recovered in these circumstances⁴. This general rule applies to retainers to conduct or defend ordinary actions⁵ or arbitrations⁶, but it is not an absolute one and yields to special circumstances. Thus, a retainer may expressly⁷ or by necessary implication⁸ fix the period for which it is to endure, or, in the absence of express agreement, the nature of the business may justify an inference that the parties did not intend the retainer to be a contract to finish the business⁹. Nevertheless, even though a retainer is an entire contract, a term will be implied, in the absence of express agreement¹⁰, enabling the solicitor to withdraw from the retainer for good cause and upon reasonable notice¹¹. Good cause includes a failure to provide funds for disbursements¹², the discovery that an action, properly commenced, cannot be successfully maintained¹³, or the solicitor's being asked to do something dishonourable or being hindered and prevented by the client in and from conducting the action¹⁴.

If a solicitor who has been retained by a client to conduct contentious business¹⁵ requests the client to make a payment of a reasonable sum of money on account of the costs incurred or to be incurred in the conduct of that business, and the client refuses or fails within a reasonable time to make that payment, the refusal or failure is deemed to be a good cause whereby the solicitor may, upon giving reasonable notice to the client, withdraw from the retainer¹⁶.

It seems that a term will also be implied enabling the client to withdraw the retainer at any time¹⁷. A withdrawal should be plainly expressed, for 'something definite, clear and precise' is required to withdraw a retainer¹⁸.

1 *Re Romer and Haslam* [1893] 2 QB 286 at 298, CA, per Bowen LJ (litigation); *Warmingtons v McMurray* [1936] 2 All ER 745 at 748-749 per Goddard J (affd [1937] 1 All ER 562 at 565, CA, per Farwell LJ) (arbitration proceedings and other matters). Unless the case is covered by authority, the question whether a retainer is or is not an entire contract must be determined by applying the rules applicable to contracts generally. These rules are stated in Serjeant Williams' notes to Saunders Reports under the decision in *Pordage v Cole* (1669) 1 Wms Saund 319: see **CONTRACT** vol 9(1) (Reissue) PARA 922. Thus, in the case of litigation the retainer may be said to be entire; therefore completion of the business is a condition upon the fulfilment of which the payment of costs depends, either because costs are not taxed until after judgment, so that the time of payment according to ordinary practice is after completion of the work, or because the client gets no benefit until judgment, so that the obtaining of judgment goes to the whole consideration.

2 It has been said that there is no such thing as 'the office of solicitor, that is to say, that a man has got a solicitor, not as a person whom he is employing to do some particular business for him, either conveyancing, scrivenering, or conducting an action, but as an official solicitor' (*Saffron Walden Second Benefit Building Society v Rayner* (1880) 14 ChD 406 at 409, CA, per James LJ); but nowadays solicitors are frequently in permanent employment in the legal departments of large business concerns.

3 *Wild v Simpson* [1919] 2 KB 544 at 566, CA, per Atkin LJ (distinguished in *Wilson v William Sturges & Co* [2006] EWHC 792 (QB), [2006] 16 EG 146 (CS)).

4 See the cases cited in notes 1, 5.

5 *Harris v Osbourn* (1834) 2 Cr & M 629; *Underwood, Son and Piper v Lewis* [1894] 2 QB 306, CA (defence); *Court v Berlin* [1897] 2 QB 396, CA (claim); *Re Wingfield and Blew* [1904] 2 Ch 665 at 671, CA. Cf *Whitehead v Lord* (1852) 7 Exch 691. See also *Euroafrica Shipping Lines Co Ltd v Zegula Polska SA*; *Zegula Polska SA v Pol-Fin Shipping Ltd* [2004] EWHC 385 (Comm), [2004] 2 BCLC 97 (issues regarding proper constitution of client's board irrelevant to retainer to conduct litigation).

6 *Re Romer and Haslam* [1893] 2 QB 286, CA; *Warmingtons v McMurray* [1936] 2 All ER 745 at 748. However, there may be breaks in protracted arbitration proceedings which justify the termination of the contract or, from the practical aspect, a demand for the payment of costs before the whole proceedings are completed.

7 See PARA 780. Uncompleted work may be remunerated under special statutory provision if contentious and subject to a written agreement as to remuneration: see PARA 781.

8 See *Hollings v Booth* (1860) 2 F & F 220, where a condition was implied that the retainer was to continue until there was a fund in court available for costs; and *Emmens v Elderton* (1853) 4 HL Cas 624, where in the circumstances a term that the retainer should endure for one year was inferred.

9 *Warmingtons v McMurray* [1936] 2 All ER 745 (affd [1937] 1 All ER 562, CA) (retainer to get a client out of difficulties). In the case of proceedings which are protracted and in the course of which breaks occur the retainer may be construed as justifying termination, or, if that is not desired, payment of costs upon the occurrence of a break: *Re Hall and Barker* (1878) 9 ChD 538; *Re Romer and Haslam* [1893] 2 QB 286, CA. Cf *Re Nelson, Son and Hastings* (1885) 30 ChD 1, CA (agency business). Consequently, where the retainer is general (and for this reason is not an entire contract) the solicitor may terminate it upon reasonable notice (see *Warmingtons v McMurray* at 565 per Farwell LJ; cf *Buckle v Roach* (1819) 1 Chit 193), but where the proceedings reach a natural break no notice is necessary in order to enable the solicitor to recover costs to that date (see *Re Hall and Barker*; *Re Romer and Haslam* [1893] 2 QB 286, CA).

10 See eg *Webster v Le Hunt* (1861) 9 WR 804 (agreement not to require funds); *Bluck v Lovering & Co* (1886) 35 WR 232, DC (special stipulation to provide funds).

11 *Underwood, Son and Piper v Lewis* [1894] 2 QB 306 at 311, 315, CA. See also *Rowson v Earle* (1829) Mood & M 538; *Hoby v Built* (1832) 3 B & Ad 350; *Vansandau v Browne* (1832) 9 Bing 402. The termination of a retainer by death or insanity of the solicitor (see PARA 780) likewise rests on a condition implied from the fact that the retainer is a contract for personal services: cf **CONTRACT** vol 9(1) (Reissue) PARA 903.

12 *Wadsworth v Marshall* (1832) 2 Cr & J 665; *Whitehead v Lord* (1852) 7 Exch 691; *Robins v Goldingham* (1872) LR 13 Eq 440.

13 *Lawrence v Potts* (1834) 6 C & P 428.

14 *Underwood, Son and Piper v Lewis* [1894] 2 QB 306 at 314, CA. Cf this case as reported in (1894) Times, 24 July.

15 As to the meaning of 'contentious business' see PARA 933 note 2.

16 Solicitors Act 1974 s 65(2).

17 See *Court v Berlin* [1897] 2 QB 396 at 400-401, CA, per AL Smith LJ; *Re Wingfield and Blew* [1904] 2 Ch 665 at 671, CA, per Warrington J. With regard to litigation see *Merryweather v Mellish* (1806) 13 Ves 161 at 162; *Twort v Dayrell* (1806) 13 Ves 195; *Cresswell v Byron* (1807) 14 Ves 271 at 272.

If a contract is entire, then, unless a term is implied enabling a party to terminate it, termination of it by a party before the time for performance is completed or has arrived gives the other party a right of action: see eg *George Trollope & Sons v Martyn Bros* [1934] 2 KB 436 at 456 et seq, CA. This principle applies to a contract of retainer as to other contracts, but there is not, it is believed, any reported instance of a claim for damages having been advanced upon the withdrawal by the client of an indefinite retainer. *Emmens v Elderton* (1853) 4 HL Cas 624 is to be distinguished as the retainer was to endure for one year in the circumstances. See also the judgment of Kindersley V-C in *Re Smith* (1861) 9 WR 396. The views stated in the text and this note were cited with approval in *JM Milner & Son v Percy Bilton Ltd* [1966] 2 All ER 894 at 900, [1966] 1 WLR 1582 at 1588 per Fenton Atkinson J.

18 *Re Wingfield and Blew* [1904] 2 Ch 665 at 684, CA.

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779. Retainer at a salary.

A retainer of a solicitor to act for a term certain at a salary or for a fixed sum is perfectly good, but the provisions fixing the remuneration must be in writing¹. A retainer at a fixed salary only gives the solicitor the right to sue for and recover the salary; he cannot insist upon being furnished with work to do², unless the contract, upon its true construction or expressly, so provides. Thus the solicitor cannot usually recover damages for failure to supply work, and in no case can he insist on actually representing the client against his will³.

1 See the Solicitors Act 1974 ss 57(3), 59(1); and PARAS 942, 945. As to the remuneration of solicitors generally see PARA 931 et seq. As to the position of salaried solicitors see *Alfred Crompton Amusement Machines Ltd v Customs and Excise Comrs (No 2)* [1972] 2 QB 102 at 129, [1972] 2 All ER 353 at 376, CA, per Lord Denning MR; affd on different grounds [1974] AC 405, [1973] 2 All ER 1169, HL.

2 *Emmens v Elderton* (1853) 4 HL Cas 624; *Galloway v London Corpn* (1867) LR 4 Eq 90; *Rees v Williams* (1875) LR 10 Exch 200.

3 *Re Galland* (1885) 31 ChD 296 at 300 per Chitty J; affd on other grounds 31 ChD at 304, CA. In cases in which litigation is being conducted in the name of a nominal claimant but the substantial interest is vested in another person who indemnifies the nominal claimant against costs it is just that the person bearing the burden of the litigation should not have his reasonable conduct of the litigation rendered futile or impossible, and accordingly the nominal claimant will not be allowed to revoke the solicitor's retainer: see *Montforts v Marsden* [1895] 1 Ch 11.

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780. Termination of retainer.

A retainer is terminated without breach of the contract of retainer on the conclusion of the business for which the retainer was given¹ or, if it was for a fixed period, on the expiration of that period, or by the death² or the mental incapacity³ of the client or of the solicitor⁴, or on the happening of an event rendering its continuance unlawful⁵, or on the bankruptcy of the client⁶ or, it seems, of the solicitor, since his bankruptcy operates immediately to suspend his practising certificate⁷. In a company winding up, a solicitor's retainer is not revoked by the removal of the liquidator who retained him⁸.

A retainer which has not been given for a fixed or minimum period may be terminated by the client at any time without constituting a breach of contract⁹ or, as in the case of any other contract, a disclaimer of liability may be accepted as repudiation¹⁰.

A solicitor must not cease acting for a client except for good reason and on reasonable notice¹¹.

A retainer which has not been given for a fixed or minimum period may be terminated by the solicitor without breach only when the termination is permissible according to the principles previously stated¹². The contract of retainer is broken and the retainer is ended if the solicitor does acts which prevent him continuing the work¹³. Thus, an assignment of his business¹⁴ or imprisonment¹⁵ or disqualification¹⁶ or, if a firm is retained, the dissolution of the firm¹⁷ puts an end to the retainer, but the solicitor's pecuniary embarrassment¹⁸ is not necessarily enough¹⁹.

1 See PARA 778. In the case of protracted business having natural breaks the retainer is terminated, so as to allow the solicitor to claim costs, on the occurrence of a break: see PARA 778 note 9. While the solicitor's authority endures, his duty towards his client endures also in relation to the proceedings (see *Lady De la Pole v Dick* (1885) 29 ChD 351 at 356-357, CA, per Cotton LJ), and therefore until the client substitutes another solicitor on the record, or constitutes himself as a litigant in person, the solicitor should be entitled to do and to charge for doing work necessary to fulfil his duty. As to the position of a solicitor who discharges himself see *Gamlen Chemical Co (UK) Ltd v Rochem Ltd* [1980] 1 All ER 1049, [1980] 1 WLR 614, CA.

2 *Pool v Pool* (1889) 61 LT 401. Cf *Chalié v Gwynne* (1846) 9 Beav 319. Accordingly the solicitor can sue the personal representatives of the client for costs in respect of work done: *Whitehead v Lord* (1852) 7 Exch 691. The personal representatives may incur personal liability by continuing the retainer: *Re Bentinck, Bentinck v Bentinck* (1893) 37 Sol Jo 233.

3 *Yonge v Toynbee* [1910] 1 KB 215, CA, overruling *Smout v Ilbery* (1842) 10 M & W 1, and approving *Collen v Wright* (1857) 8 E & B 647, Ex Ch. See also PARA 771.

4 This is because the contract is one for personal services: see **CONTRACT** vol 9(1) (Reissue) PARA 903. It is uncertain whether the solicitor's personal representatives can sue for costs for work done before the death: *Underwood, Son and Piper v Lewis* [1894] 2 QB 306 at 313, CA, per Lord Esher MR; cf *Re Smith* (1861) 9 WR 396; *Poussard v Spiers and Pond* (1876) 1 QBD 410 at 414. See now the Law Reform (Frustrated Contracts) Act 1943 s 1; and **CONTRACT** vol 9(1) (Reissue) PARA 913 et seq.

5 See **AGENCY** vol 1 (2008) PARA 187; and *V/O Sovfracht v Van Udens Scheepvaart en Agentuur Maatschappij (NV Gebr)* [1943] AC 203, [1943] 1 All ER 76, HL (termination of retainer on client becoming enemy alien). See also *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307, HL; and PARA 768 note 2.

6 *Re Moss* (1866) LR 2 Eq 345; cf *Becke v Penn* (1835) 7 C & P 397, where an assignee was not liable for the costs of work before the assignment. In *Re Moss* at 348, Lord Romilly held that if the client becomes bankrupt, and the assignees do not employ the firm of solicitors, that is a discharge by the solicitor's client. If the retainer is continued by the trustee with the sanction of the creditors' committee and the solicitor's concurrence, no question arises, but it is submitted that *Re Moss* is an authority for the proposition that a client's bankruptcy is a

discharge of the solicitor and that that proposition is correct, because (1) the bankruptcy should terminate the authority of the solicitor which he may have warranted to third persons (cf **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 418); (2) the solicitor is probably acting on the faith of his client's credit and bankruptcy makes it impossible for the client to fulfil his obligations in respect of future services and disbursements; and (3) the relationship of solicitor and client is confidential and fiduciary, and the solicitor never agreed to act for the trustee in bankruptcy.

7 See the Solicitors Act 1974 s 15(1); and PARA 901. As to the discretion with regard to practising certificates see s 12 (prospectively repealed); and PARA 898. The position of a solicitor on his bankruptcy is determined by the ordinary law of bankruptcy; but as to a solicitor's lien see PARA 996 et seq. As to income payments orders see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) para 449.

8 *R v Lord Mayor of London, ex p Boaler* [1893] 2 QB 146, DC.

9 See PARA 778 note 18. The question whether a breach of contract has or has not been committed goes only to the payment of costs or perhaps of damages; the solicitor cannot insist on representing the client: *Re Galland* (1885) 31 ChD 296 at 300, CA, per Chitty J.

10 See *Hawkes v Cottrell* (1858) 3 H & N 243 at 245.

11 Solicitors' Code of Conduct 2007 r 2.01(2). If a client wished to pursue a case that the solicitor honestly believed he was going to lose, provided that the solicitor had given clear advice to the client and absent any impropriety or misleading of the court, the client was entitled to instruct him to do so and the solicitor was not entitled to terminate the retainer: *Richard Buxton (Solicitors) v Mills-Owens* [2008] EWHC 1831 (QB), [2008] All ER (D) 356 (Jul).

12 See PARA 778.

13 This is in accordance with general principle: see **CONTRACT** vol 9(1) (Reissue) PARA 786. Acts of misconduct may justify termination, although the solicitor has not been disqualified: see *Re Smith* (1841) 4 Beav 309.

14 *Colegrave v Manley* (1823) Turn & R 400.

15 *Scott v Fenning* (1845) 15 LJ Ch 88 (litigation). See also the Solicitors Act 1974 s 40 (prospectively repealed); and PARAS 582, 747. Presumably a similar result follows in conveyancing matters as the solicitor cannot attend to the business.

16 See note 13. If the solicitor's disqualification is not attributable to a default on his part, it seems that he is entitled to costs for work done: see *Re Smith* (1861) 9 WR 396 per Kindersley V-C.

17 *Griffiths v Griffiths* (1843) 2 Hare 587; *Rawlinson v Moss* (1861) 30 LJ Ch 797. A solicitor who was formerly a member of the firm may be retained without need for a fresh written retainer: *Perrins v Hill* (1838) 2 Jur 858.

18 See *Re Smith* (1861) 9 WR 396.

19 An accident keeping a solicitor away from practice for an indefinite period has been held to be good cause for the client to terminate the retainer, and, where in these circumstances the client instructed a new solicitor at the suggestion of his first solicitor, the court implied a term that the first solicitor should receive costs for the period up to the termination of the retainer: *Forney v Bushe* (1954) 104 L Jo 604.

UPDATE

780 Termination of retainer

NOTE 11--*Buxton*, cited, reversed: [2010] EWCA Civ 122, [2010] 17 EG 96, [2010] All ER (D) 242 (Feb) (solicitor had good reason to terminate retainer where rightly considered points advanced by client to be hopeless and not properly arguable).

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781. Position upon termination of retainer.

When a retainer, although an entire contract, is terminated without breach or is repudiated by the client, the solicitor is entitled to recover costs for work done under the retainer¹. However, if the retainer is an entire contract and is terminated upon the unjustified withdrawal or other breach by the solicitor, then the client is not liable to make any payment in respect of work done by the solicitor under the retainer².

In relation to the solicitor's retaining lien the question whether he has discharged himself or has been discharged by his client is important. If the solicitor discharged himself, he may be compelled to deliver up 'subject to his lien'³ papers requisite for use in a pending action, even though he has a retaining lien over them for costs not yet paid by the client⁴, whereas if he has been discharged by his client, the solicitor may exercise his retaining lien as against the client⁵.

When the termination of the retainer is due to the client's acts, as when he gives notice of change of solicitor in an action⁶, clearly the client has discharged the solicitor. The client's bankruptcy also constitutes a discharge by the client⁷. Similarly, if the solicitor terminates the contract of retainer upon proper notice and, if necessary, for good cause, he has discharged himself⁸, and clearly where the termination is due to the solicitor's breach of contract, the client has been discharged by the solicitor⁹.

Where the solicitor and client have agreed the remuneration for work in respect of contentious business under the retainer¹⁰, the court has jurisdiction, on a change of solicitor by the client or on the solicitor's death or incapacity before the work has been completed and notwithstanding that it considers the agreement to be fair and reasonable, to order that the remuneration due for business done be ascertained on assessment in which regard will be had to the terms of the agreement, and payment of the amount found to be due may be enforced as if the agreement had been fully performed¹¹.

A solicitor may still have a duty to observe fiduciary obligations in his personal dealings with a former client¹².

1 *Vansandau v Browne* (1832) 9 Bing 402; *Whitehead v Lord* (1852) 7 Exch 691 (client's death). Thus, where the client withdrew a retainer to do non-contentious probate work, the solicitor was held entitled to his costs up to that time, but was not entitled to charges for taking out the grant which was in fact done by another solicitor: *Re Lane Joynt* [1920] IR 228. It seems that the solicitor is not entitled to sue for the costs of litigious work until the termination of the litigation, when the contract of retainer was entire (*Grant v Holland* (1878) 3 CPD 180), but it is submitted that the principle on which this case was decided is not now good law (cf *Newbiggin-by-the-Sea Gas Co v Armstrong* (1879) 13 ChD 310, CA).

2 See *Richard Buxton (Solicitors) v Mills-Owens* [2008] EWHC 1831 (QB), [2008] All ER (D) 356 (Jul). Cf PARA 778; *Colgrave v Manley* (1823) Turn & R 400 at 402 per Lord Eldon.

3 This must be something of a euphemism, for the lien will be of little value when the documents subject to it are no longer wanted.

4 *Heslop v Metcalfe* (1837) 3 My & Cr 183, followed in *Gamlen Chemical Co (UK) Ltd v Rochem Ltd* [1980] 1 All ER 1049, [1980] 1 WLR 614, CA. See also PARA 1003.

5 See PARA 1003.

6 *Webster v Le Hunt* (1861) 9 WR 804.

7 *Re Moss* (1866) LR 2 Eq 345; see further PARA 780 note 6.

8 *Robins v Goldingham* (1872) LR 13 Eq 440.

9 Eg on the dissolution of partnership of a firm retained: *Griffiths v Griffiths* (1843) 2 Hare 587 at 594-596. When the conduct of proceedings is entrusted to a new claimant the position is the same as if the old solicitor had discharged his client and the new claimant had succeeded to the client's rights: *Bennett v Baxter* (1840) 10 Sim 417.

10 Ie under the Solicitors Act 1974 s 59: see PARA 945. As to the meaning of 'contentious business' see PARA 933 note 2.

11 See Solicitors Act 1974 s 63(1), (2); and PARA 950.

12 See *Longstaff v Birtles* [2001] EWCA Civ 1219, [2002] 1 WLR 470.

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782. Change of solicitor.

In all proceedings in county courts, the High Court and the Civil Division of the Court of Appeal the following provisions generally apply¹ where:

- 1003 (1) a party for whom a solicitor is acting wants to change his solicitor;
- 1004 (2) a party, after having conducted the claim in person, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
- 1005 (3) a party, after having conducted the claim by a solicitor, intends to act in person².

The party or his solicitor (where one is acting) must file and serve notice of the change on the other party and where heads (2) and (3) above apply, on the former solicitor³.

Where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until notice is served⁴ or the court makes an order that the solicitor has ceased to act⁵ and the order is served as required⁶.

In relation to criminal proceedings, the following apply where:

- 1006 (a) a party for whom a solicitor is acting in restraint proceedings or receivership proceedings wants to change his solicitor;
- 1007 (b) a party, after having represented himself in such proceedings, appoints a solicitor to act on his behalf (except where the solicitor is appointed only to act as an advocate for a hearing); or
- 1008 (c) a party, after having been represented by a solicitor in such proceedings, intends to act in person⁷.

Where this rule applies, the party or his solicitor (where one is acting) must lodge notice of the change at the Crown Court and serve notice of the change on every other party and, where head (a) or (c) apply, on the former solicitor⁸.

Where a party has changed his solicitor or intends to act in person, the former solicitor will be considered to be the party's solicitor unless and until notice is served⁹ or the Crown Court makes an order that the solicitor has ceased to act¹⁰ and the order is served as required¹¹.

1 As to when these provisions apply see CPR 2.1; and **CIVIL PROCEDURE** vol 11 (2009) PARA 32.

2 CPR 42.2(1).

3 CPR 42.2(2). The notice must state the party's new address for service: CPR 42.2.(3). The notice filed at court must state that notice has been served as required: CPR 42.2(4).

4 Ie in accordance with CPR 42.2(2)(b).

5 Ie an order under CPR 42.3 (see PARA 784).

6 CPR 42.2(5). This is subject to CPR 42.2(6). Where the certificate of a LSC funded client or an assisted person is revoked or discharged:

131 (1) the solicitor who acted for that person will cease to be the solicitor acting in the case as soon as his retainer is determined under the Community Legal Service (Costs) Regulations 2000, SI 2000/516, reg 4 or under the Civil Legal Aid (General) Regulations 1989, SI 1989/339, reg 83 (CPR 42.2(6)(a)); and

132 (2) if that person wishes to continue where he appoints a solicitor to act on his behalf, CPR 42.2(2) will apply as if he had previously conducted the claim in person and where he wants to act in person, he must give an address for service (CPR 42.2(6)(b)).

'Certificate' in CPR 42.2(6) means in the case of a LSC funded client, a certificate issued under the Funding Code (approved under the Access to Justice Act 1999 s 9) or in the case of an assisted person, a certificate within the meaning of the Civil Legal Aid (General) Regulations 1989, SI 1989/339: CPR 42.2(6).

'LSC funded client' means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of the Access to Justice Act 1999 Pt I: CPR 43.2.

7 CrimPR 61.16(1).

8 CrimPR 61.16(2). The notice lodged at the Crown Court must state that notice has been served as required: CrimPR 61.16(3).

9 Ie in accordance with CrimPR 61.16(2).

10 Ie an order under CrimPR 61.17 (see PARA 784).

11 CrimPR 61.16(4). This is subject to CrimPR 61.16(5). Where the certificate of a LSC funded client is revoked or discharged:

133 (1) the solicitor who acted for that person will cease to be the solicitor acting in the proceedings as soon as his retainer is determined under the Community Legal Service (Costs) Regulations 2000, SI 2000/516, reg 4; and

134 (2) if that person wishes to continue, where he appoints a solicitor to act on his behalf CrimPR 61.16(2) will apply as if he had previously represented himself in the proceedings: CrimPR 61.16(5).

'Certificate' in CrimPR 61.16(5) means a certificate issued under the Funding Code (approved under the Access to Justice Act 1999 s 9) and 'LSC funded client' means an individual who receives services funded by the Legal Services Commission as part of the Community Legal Service within the meaning of Part I: CrimPR 61.16(6).

UPDATE

782 Change of solicitor

TEXT AND NOTES 7-11--CrimPR 61.16 now Criminal Procedure Rules 2010, SI 2010/60, r 61.16.

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783. Effect on contentious business agreement of change of solicitor.

Where the client changes his solicitor in the course of contentious business after having agreed his remuneration¹, the court has jurisdiction to order assessment, notwithstanding that it considers the agreement to be fair and reasonable, and payment of the amount found due may be enforced as if the work had been fully performed². On this assessment regard must be had to the circumstances under which the change of solicitor took place and to the terms of the agreement, and the solicitor will not be allowed the full amount of the remuneration agreed to be paid to him³ unless there has been no default, negligence, improper delay or other conduct on his part⁴ affording reasonable ground for the change of solicitor⁵. The opinion of the costs officer as to the existence of such default, negligence, improper delay or other conduct appears to be conclusive if there was any material whatever on which that opinion could reasonably be based⁶.

Where a partner in a firm of solicitors which has acted for one party in litigation moves to a new firm and one of the opposing parties then wishes to employ his services as solicitor, the burden is on that former partner to prove that there is no real risk that he has any relevant confidential information which would make it improper for his services to be so employed⁷.

¹ I.e. under the Solicitors Act 1974 s 59: see PARA 945.

² Solicitors Act 1974 s 63(2). The Solicitors Act 1974 s 63(2) is prospectively amended by the Legal Services Act 2007 Sch 16 para 59 which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq. As to the meaning of 'court' see s 61(6); and PARA 948 note 3.

³ These are the words used in the Solicitors Act 1974 s 63. It is submitted that they mean the full amount of remuneration computed in accordance with the agreement for the work done. If they are interpreted literally, their effect is to give the solicitor the whole sum that he would have received if he had completed the work, i.e. payment of what he has earned and also damages for being removed from employment when in fact no breach of the contract of retainer may have been committed by the client.

⁴ As from a day to be appointed the Solicitors Act 1974 s 63(3) is amended by the Legal Services Act 2007 Sch 16 para 59 to include where there has been default, negligence, improper delay or other conduct on the part of the solicitor's employees. At the date at which this volume states the law no such day had been appointed.

⁵ Solicitors Act 1974 s 63(3). The Solicitors Act 1974 s 63(3) is prospectively amended by the Legal Services Act 2007 Sch 16 para 59 which reflects the replacement of taxation of costs with assessment of costs.

⁶ See the Solicitors Act 1974 s 63(3). The Solicitors Act 1974 s 63(3) is prospectively amended by the Legal Services Act 2007 Sch 16 para 59 which reflects the replacement of taxation of costs with assessment of costs. Cf the principles stated by Jessel MR in *Re Taylor* (1876) 4 ChD 157 at 159-160; and Lord Haldane LC in *National Telephone Co Ltd v Postmaster-General* [1913] AC 546 at 552, HL. See also *Boswell v Coaks* (1887) 36 ChD 444, CA.

⁷ See *Re a firm of Solicitors* [1997] Ch 1, [1995] 3 All ER 482. As to acting for opposing interests see further PARA 817.

UPDATE

783 Effect on contentious business agreement of change of solicitor

NOTES 2, 5, 6--Amendments made by Legal Services Act 2007 Sch 16 para 59 is 1 January 2010: SI 2009/3250.

NOTE 4--Day appointed is 31 March 2009: SI 2009/503.

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784. Removal or withdrawal of solicitor.

A solicitor may apply for an order declaring that he has ceased to be the solicitor acting for a party¹.

Where a solicitor who has acted for a party has died, has become bankrupt, has ceased to practice or cannot be found and the party has not given notice of a change of solicitor or notice of intention to act in person² any other party may apply for an order declaring that the solicitor has ceased to be the solicitor acting for the other party in the case³.

1 CPR 42.3(1); CrimPR 61.17(1).

Where an application is made under CPR 42.3 notice of the application must be given to the party for whom the solicitor is acting, unless the court directs otherwise, and the application must be supported by evidence: CPR 42.3(2). Where the court makes an order that a solicitor has ceased to act a copy of the order must be served on every party to the proceedings and, if it served by a party or the solicitor, the party or the solicitor (as the case may be) must file a certificate of service: CPR 42.3(3). Where the address for service of a party is the business address of his solicitor, the solicitor will be considered to be acting for that party until the provisions of the CPR Pt 42 have been complied with: CPR 42.1.

Where an application is made under the CrimPR notice of the application must be given to the party for whom the solicitor is acting, unless the Crown Court directs otherwise and the application must be supported by evidence: CrimPR 61.17(2). Where the Crown Court makes an order that a solicitor has ceased to act, the solicitor must serve a copy of the order on every party to the proceedings: CrimPR 61.17(3).

2 Ie as required by CPR 42.2(2) (see PARA 782).

3 See CPR 42.4(1) and CrimPR 61.18(1).

Where an application is made under CPR 42.4, notice of the application must be given to the party to whose solicitor the application relates unless the court directs otherwise: CPR 42.4(2). Where the court makes an order made under CPR 42.4 a copy of the order must be served on every other party to the proceedings and where it is served by a party, that party must file a certificate of service: CPR 42.4(3).

Where an application is made under CrimPR 61.18, notice of the application must be given to the party to whose solicitor the application relates unless the Crown Court directs otherwise: CrimPR 61.18(2). Where the Crown Court makes an order under CrimPR 61.18, the applicant must serve a copy of the order on every other party to the proceedings: CrimPR 61.18(3).

UPDATE

784 Removal or withdrawal of solicitor

TEXT AND NOTES--CrimPR 61.17, 61.18 now Criminal Procedure Rules 2010, SI 2010/60, rr 61.17, 61.18.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(i) Retainer/D. DOCUMENTS/785. Ownership and use of documents.

D. DOCUMENTS

785. Ownership and use of documents.

Documents coming into existence in the course of business transacted under a retainer, and either prepared for the benefit of the client¹ or received by the solicitor as agent for the client², belong to the client. However, documents prepared by the solicitor for his own protection or benefit³, and letters written by the client to the solicitor, belong to the solicitor⁴. If copies of documents or the originals were in a solicitor's possession but have come into the possession of an unauthorised person, he will be restrained from using them in breach of the confidence under which they were in the solicitor's custody⁵. An agreement in partnership articles between solicitors regulating the right to clients' papers on dissolution or other events will bind the partners but not their clients⁶.

On delivering up documents to a client a solicitor can only charge for preparing a list of the documents if the list, or the affidavit in which or as an exhibit to which the list appears, is required for the client's benefit⁷.

1 Eg vouchers (*Re Ellis and Ellis* [1908] WN 215); deeds whether originals or drafts or copies (*Ex p Horsfall* (1827) 7 B & C 528); and any drafts and copies prepared in non-contentious business. This principle is part of the law of agency: *Re Thomson* (1855) 20 Beav 545; cf *Howard v Gunn* (1863) 32 Beav 462 at 465; *Gibbon v Pease* [1905] 1 KB 810, CA. Cf PARA 758 note 8.

2 Eg letters written to the solicitor by third persons: *Re Thomson* (1855) 20 Beav 545 at 547.

3 Eg copies of letters received by him (*Re Thomson* (1855) 20 Beav 545); copies of letters addressed by the solicitor to his client (*Re Wheatcroft* (1877) 6 ChD 97); and notes made by the solicitor for his own information (*Leicestershire County Council v Michael Faraday & Partners Ltd* [1941] 2 KB 205, [1941] 2 All ER 483, CA; *Chantrey Martin & Co v Martin* [1953] 2 QB 286, [1953] 2 All ER 691, CA). An entry made in his solicitor's business books is not binding on the client: *Fisher v Fisher* 1952 SC 347, Ct of Sess.

4 *Re Thomson* (1855) 20 Beav 545; *Re Wheatcroft* (1877) 6 ChD 97.

5 *Lord Ashburton v Pape* [1913] 2 Ch 469, CA. This principle does not depend on the ownership of documents, but on the prevention of an abuse of confidential information, howsoever acquired. Where documents are obtained from solicitors by stealth or a trick within the precincts of the court, this is probably a contempt of court which the court should not countenance by admitting the documents in evidence: see *ITC Film Distributors Ltd v Video Exchange Ltd* [1982] Ch 431, [1982] 2 All ER 241.

6 See *Taylor v Davis* (1834) cited in 3 Beav at 388n; *Whittaker v Howe* (1841) 3 Beav 383. Cf *Davidson v Napier* (1827) 1 Sim 297. As to the effect of a transfer of goodwill on the right to papers see *James v James and Bendall* (1889) 22 QBD 669 at 675n, DC.

7 *Re RP Morgan & Co* [1915] 1 Ch 182 at 186. Cf *Ex p Willand* (1851) 11 CB 544; *Re Catlin* (1854) 18 Beav 508 at 514; *Rawlinson v Moss* (1861) 30 LJ Ch 797.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(ii) Authority of Solicitor/A. IN GENERAL/786. Limits of solicitor's authority.

(ii) Authority of Solicitor

A. IN GENERAL

786. Limits of solicitor's authority.

The question whether or not a solicitor has authority from his client has two practical aspects. First, if unauthorised, he will be unable to charge his client costs for work done. Second, his unauthorised acts will not bind his client to third persons unless those acts are within his ostensible authority¹. The solicitor's authority to act for his client arises from his retainer, and thus is confined to transacting the business to which the retainer extends² or impliedly extends³, and is subject to any express terms of the retainer limiting the authority. Similarly, the solicitor may be authorised expressly by the client to do acts or incur expenses which would not otherwise be authorised under the retainer⁴.

In the absence of special instructions, a general retainer, whether relating to contentious or non-contentious business, does not authorise the solicitor to make long journeys or go abroad at his client's expense, but, if whilst in a locality where work can usefully be done for his client he does work which, on his return, is adopted and utilised by the client, the solicitor is entitled to charge a fair remuneration in respect of the time actually so occupied⁵. In the absence of express authority a solicitor has no authority to receive notices on behalf of his client⁶.

A solicitor has no authority to pledge his client's credit to counsel for fees, whether in respect of contentious or non-contentious business⁷.

1 In *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, 1 All ER 1095, CA, it was held that a solicitor retained in an action which had been commenced had (1) implied authority as between himself and his client to compromise the suit without reference to the client, provided the compromise did not involve matter collateral to the action; and (2) ostensible authority, as between himself and the opposing litigant, to compromise the suit without actual proof of authority, subject to the same limitation.

2 This is so since the relationship of solicitor to client is in general one of agent to principal (cf PARA 768), and the agent's authority must be limited by his agreement, express or implied, with his principal. An illustration of the principle is afforded by *James v Ricknell* (1887) 20 QBD 164, DC, where interpleader proceedings upon execution were held to be in substance a second action and therefore not to be authorised by the retainer for the action in which judgment was recovered; cf PARA 797.

3 See *Wright v Pepin* [1954] 2 All ER 52, [1954] 1 WLR 635, where it was held that, although not expressly authorised to acknowledge a mortgage debt, a solicitor had authority to put his client's affairs in order and in so doing he had properly acknowledged a debt. See further **LIMITATION PERIODS** vol 68 (2008) PARA 1185.

4 See eg *Re Storer* (1884) 26 ChD 189 (special journeys).

5 *Alsop v Lord Oxford* (1833) 1 My & K 564; *Re Snell* (1877) 5 ChD 815 at 827, 833, CA. As to contentious and non-contentious business see PARA 933.

6 *Singer v Trustee of the Property of Munro (a bankrupt)* [1981] 3 All ER 215, [1981] 1 WLR 1358. See PARA 794.

7 *Mostyn v Mostyn* (1870) 5 Ch App 457, CA. A solicitor duly instructed to brief counsel is, however, entitled to recover from his client fees paid to counsel, even though payment is made after action at a time when the client has forbidden the payment to be made: *Medlicott v Emery* (1933) 149 LT 303.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(ii) Authority of Solicitor/B. NON-CONTENTIOUS BUSINESS/787. Payments authorised by production of deed.

B. NON-CONTENTIOUS BUSINESS

787. Payments authorised by production of deed.

Where a solicitor produces a deed having in the body of the deed or indorsed on it a receipt for consideration money or other consideration, and the deed has been executed, or the indorsed receipt signed, by the person entitled to give a receipt for that consideration, the deed itself authorises payment being made to the solicitor without his producing any separate authority from the person who executed or signed the deed or receipt¹.

The solicitor must actually produce the deed² and be acting for the party to whom the money is expressed to be paid³. The production of the deed in the requisite form is equivalent to the production by the solicitor of a special authority to receive the consideration, which was formerly necessary⁴. Consequently, a solicitor is not entitled to receive consideration if the ultimate payee could not have authorised him by a special authority, or where the instrument containing the receipt is not executed by the ultimate payee but his signature to it is forged⁵.

1 See the Law of Property Act 1925 s 69(1); and **SALE OF LAND** vol 42 (Reissue) PARA 315. Apart from the statutory provision, the possession of title deeds and the production of a deed is not sufficient authority for paying money to a solicitor (*Jared v Walke* (1902) 18 TLR 569 at 570), but possession of a deed containing a receipt may constitute an estoppel preventing the party giving the receipt denying that the solicitor was his solicitor to produce the deed and receive the money (see *King v Smith* [1900] 2 Ch 425; and **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 224; and cf *Jared v Clements* (1903) 1 Ch 428, CA (forged receipt, which presumably was under hand only)).

2 *Day v Woolwich Equitable Building Society* (1888) 40 ChD 491 at 493.

3 See **SALE OF LAND** vol 42 (Reissue) PARA 315. It is submitted that the fact that the solicitor is not retained does not deprive the payer of protection unless there are special circumstances indicating that the solicitor has not in fact authority. What are special circumstances must vary with the particular case, but in *Hope v Liddell* (1855) 21 Beav 183 at 202, and *Viney v Chaplin* (1858) 2 De G & J 468 at 478-479, it is indicated that circumstances may justify the purchaser in insisting on paying the vendor direct or seeing to the application of the money, and it is to like circumstances that reference is made here. Cf *Re Bellamy and Metropolitan Board of Works* (1883) 24 ChD 387 at 397, CA, per Bagallay LJ.

4 *Re Bellamy and Metropolitan Board of Works* (1883) 24 ChD 387 at 398, CA; *Re Flower and Metropolitan Board of Works* (1884) 27 ChD 592 at 596; *Day v Woolwich Equitable Building Society* (1888) 40 ChD 491 at 494. As to the mode of paying the consideration see PARA 792; and **SALE OF LAND** vol 42 (Reissue) PARA 315.

5 See *Jared v Walke* (1902) 18 TLR 569; the fact that the reconveyance contained a receipt does not appear from the report, but it should have done so if it was in the common form.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(ii) Authority of Solicitor/B. NON-CONTENTIOUS BUSINESS/788. Dealing with money payable into or under order of the court.

788. Dealing with money payable into or under order of the court.

A solicitor having the conduct of a sale by the court has authority to receive the purchase money for the purpose of payment into court¹. However, where under a court order a receiver appointed by the court is directed to pay particular creditors, the solicitor for the creditors and the claimant cannot give the receiver a good discharge for the money².

1 *Biggs v Bree* (1882) 51 LJ Ch 263, CA; *Brown v Farebrother* (1888) 58 LJ Ch 3. As to payment of debts and costs see PARA 797.

2 *Ind, Coope & Co v Kidd* (1894) 63 LJQB 726. See also **RECEIVERS** vol 39(2) (Reissue) PARA 424.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(ii) Authority of Solicitor/B. NON-CONTENTIOUS BUSINESS/789. General authority of solicitor on purchase of land.

789. General authority of solicitor on purchase of land.

A solicitor retained to act for a client who proposes to purchase land has no authority to bind his client in contract to buy land unless such authority has been expressly conferred upon the solicitor or is necessarily implicit in the terms of the retainer. In each case, therefore, where the extent of a solicitor's authority is in issue, the question is one of fact, namely what was the solicitor employed to do¹. The decided cases can be grouped under two heads: (1) those in which the solicitor is employed to prepare a formal document, that is, the contract, embodying terms agreed by the vendor and purchaser either directly with each other or through agents other than the solicitor²; and (2) those in which the solicitor is employed to carry through the transaction, that is to say, both to embody in a formal document the terms that are agreed and to conclude and arrange those terms on behalf of the client³. In the first class of case the solicitor has no authority to bind his client by contract, while in the second class of case he has such authority. Analogously, a solicitor's approval of a draft may either be an approval of its form or an approval of the terms embodied in it, or an approval both of its form and of the terms which are embodied in it⁴. Which is the correct reading of the word 'approved' in a particular case depends on the circumstances which may be proved by oral evidence.

Owing to the statutory requirement that a contract for the sale of land is in writing and is signed by the parties⁵, a further question arises, namely whether a solicitor is authorised to sign such a contract on his client's behalf, so as to render a contract orally concluded enforceable against his client⁶. A solicitor must be so authorised where he is employed to carry through a transaction of purchase; but in addition, if he is authorised to sign and deliver a particular document and that document, either alone or jointly with others, constitutes a contract which satisfies the statutory requirements, the solicitor's authority is effective for the purpose of creating a sufficient contract to render his client bound, even if neither the client nor the solicitor intended to do anything to make the contract enforceable against the client⁷. However, a solicitor who is instructed to deny the existence of a contract with which his client is charged has no authority to create a contract rendering it enforceable against his client⁸.

Although a solicitor has no implied authority to bind his client in contract to buy or sell land, the solicitor does have implied and ostensible authority to effect the exchange of contracts in such manner as he thinks fit, for example by each solicitor posting his client's part of the contract to the other solicitor, or by exchanging by telephone, whereupon each solicitor holds his client's part of the contract on behalf of the other, thus effecting constructive delivery of it⁹.

There is a conclusive presumption that a lawyer has authority from his client to deliver a deed when in the course of a conveyancing transaction¹⁰.

1 See *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384, [1978] 3 All ER 571 (no 'general retainer').

2 *Smith v Webster* (1876) 3 ChD 49, CA; *Bowen v Duc d'Orleans* (1900) 16 TLR 226, CA. Cf *Forster v Rowland* (1861) 7 H & N 103. See also *H Clark (Doncaster) Ltd v Wilkinson* [1965] Ch 694, [1965] 1 All ER 934, CA.

3 *North v Loomes* [1919] 1 Ch 378; *Horner v Walker* (1923) as reported in 92 LJ Ch 573; *Koenigsblatt v Sweet* [1923] 2 Ch 314 at 321-322, CA, per Russell J.

4 *Smith v Webster* (1876) 3 ChD 49 at 58, CA; *Brogden v Metropolitan Rly Co* (1877) 2 App Cas 666 at 675, HL.

5 See the Law of Property (Miscellaneous Provisions) Act 1989 s 2; **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 79; and **SPECIFIC PERFORMANCE** vol 44(1) (Reissue) PARA 858.

6 Cf *Gavaghan v Edwards* [1961] 2 QB 220, [1961] 2 All ER 477, CA (necessary memorandum completed by letter of solicitor acting for both parties recording final term of their agreement).

7 *Daniels v Trefusis* [1914] 1 Ch 788; *Murphy v Harrington* [1927] IR 339; *Raingold v Bromley* [1931] 2 Ch 307 at 318.

8 *Thirkell v Cambi* [1919] 2 KB 590, CA.

9 *Domb v Isoz* [1980] Ch 548, [1980] 1 All ER 942, CA.

10 See the Law of Property (Miscellaneous Provisions) Act 1989 s 1(5) (amended by the Courts and Legal Services Act 1990 s 125(2), Sch 17 para 20(1)). See further **DEEDS AND OTHER INSTRUMENTS** vol 13 (2007 Reissue) PARA 34.

UPDATE

789 General authority of solicitor on purchase of land

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(ii) Authority of Solicitor/B. NON-CONTENTIOUS BUSINESS/790. Holding of deposit on sale.

790. Holding of deposit on sale.

A solicitor acting for a vendor in a sale of property either by private treaty or by auction who receives a deposit in the ordinary way and without any statement in the contract that it is paid to him as stakeholder holds it in law merely as agent for the vendor and not as stakeholder¹. He must, therefore, pay it over to his client on demand². In the absence of facts giving rise to a contrary inference, where he is acting for both parties he is probably a stakeholder³. Solicitors who hold funds which are paid to them as stakeholders hold those funds as trustees for the client, whose property the funds remain at all times. Such funds are not held in a contractual or quasi-contractual capacity⁴.

1 See **SALE OF LAND** vol 42 (Reissue) PARA 234. As to a deposit paid to a solicitor also acting as auctioneer see **AUCTION** vol 2(3) (Reissue) PARA 250.

2 *Duke of Norfolk v Worthy* (1808) 1 Camp 337; *Bamford v Shuttleworth* (1840) 11 Ad & El 926; *Edgell v Day* (1865) LR 1 CP 80; *Ellis v Goulton* [1893] 1 QB 350 at 352-353, CA; *Tudor v Hamid* [1988] 1 EGLR 251, CA. A solicitor must pay over a deposit as instructed by the vendor and purchaser: *Rockeagle Ltd v Alsop Wilkinson (a firm)* [1992] Ch 47, [1991] 4 All ER 659, CA.

3 *Edgell v Day* (1865) LR 1 CP 80 at 85 per Erle CJ. See also *Dimurro v Charles Caplin & Co* (1969) 211 Estates Gazette 31, where it was held that a solicitor stakeholder could not pay rent out of a deposit.

4 *Alimand Computer Systems v Radcliffes & Co* (1991) Times, 6 November.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(ii) Authority of Solicitor/B. NON-CONTENTIOUS BUSINESS/791. Holding of mortgage money.

791. Holding of mortgage money.

A mortgagee's solicitor is not authorised to receive the principal money secured by the mortgage, unless he is retained for a purpose necessarily involving such receipt¹. Thus, an authority to receive interest does not import a further authority to receive principal², nor is such an authority to be inferred from the retention of deeds or necessarily to be inferred from the fact that the solicitor has for some time past substantially managed the client's investments³. Where a mortgagee is selling in exercise of his power of sale, his solicitor, on producing a deed having the requisite receipt, will be authorised to receive the purchase money⁴. Where a mortgagor is selling with the concurrence of the mortgagee, it is expedient that the purchaser should not pay more than the sum due under the mortgage to the mortgagee's solicitor, even though he produces a conveyance containing a receipt and the mortgagor has no other solicitor acting for him, without ascertaining that the solicitor is in fact retained by the mortgagor as well as by the mortgagee⁵. A mortgagee who has received more than is due to him under his security upon a sale of the mortgaged property should satisfy himself that the balance is paid over to the subsequent mortgagee or mortgagor entitled to it, and will be negligent if he leaves the money in his solicitor's hands without inquiring whether the solicitor is in fact authorised to receive it for the subsequent mortgagee or the mortgagor⁶.

A solicitor who is acting for a mortgagee receives the mortgage money on bare trust from his mortgagee client as one incident of a wider commercial transaction involving agency; the depositing of money with the solicitor is but one aspect of the arrangements between the parties which for the most part are contractual and the circumstances under which the solicitor can part with money in client accounts are regulated by instructions given by the client and are not part of the trusts on which the property is held. Until the underlying conveyancing transaction is completed, the solicitor can be required to restore to the client account money wrongly paid away to a stranger; but that obligation ceases when the conveyancing transaction is completed and the client then has no right to have the solicitor's client account reconstituted as a trust fund⁷.

1 Thus, upon a reconveyance or discharge, the solicitor, by producing the deed containing a proper receipt, will be empowered to receive the mortgage money: see PARA 787, and cf the Law of Property Act 1925 ss 107(1), 113; and **MORTGAGE** vol 77 (2010) PARAS 373, 468. See also *Bourton v Williams* (1870) 5 Ch App 655, where the receipt of the mortgagee's solicitor in an action to recover the debt was held to be a good discharge; *Bowie's Trustees v Watson* 1913 SC 326, Ct of Sess.

2 *Wilkinson v Candlish* (1850) 5 Exch 91; *Kent v Thomas* (1856) 1 H & N 473 at 478, where authority for the solicitor to take payment of interest was implied where the mortgagee received interest through that solicitor acting for both parties; *Bonham v Maycock* (1928) 138 LT 736. As to the extension of the limitation period by acknowledgment of a debt see *Newbould v Smith* (1886) 33 ChD 127, CA (affd (1889) 14 App Cas 423, HL), and **LIMITATION PERIODS**.

3 *Jared v Walke* (1902) 18 TLR 569.

4 See PARA 787. Cf *Thorne v Heard* [1894] 1 Ch 599 at 609, CA, per Kay LJ; affd [1895] AC 495, HL. See also *Hockey v Western* [1898] 1 Ch 350, CA.

5 See *Day v Woolwich Equitable Building Society* (1888) 40 ChD 491; *West London Commercial Bank v Reliance Permanent Building Society* (1885) 29 ChD 954 at 960.

6 See *Thorne v Heard* [1893] 3 Ch 530 at 534. As to the application of money received on a sale under the statutory power see the Law of Property Act 1925 s 105. See generally s 107(2); and **MORTGAGE** vol 77 (2010) PARA 468.

7 *Target Holdings Ltd v Redferns (a firm)* [1996] AC 421, [1995] 3 All ER 785, HL.

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792. Accepting payments otherwise than in cash.

Unless specifically authorised to do so, a solicitor is not justified in accepting a payment by cheque or other negotiable instrument, since to be within the solicitor's general or statutory authority, payment must be made in cash¹. Where the solicitor accepts payments by cheque, he is protected if the cheque is duly met², but if it is dishonoured he is liable to make good the loss personally³. Nor is he authorised to accept payment by means of a settlement in account; such a settlement in account will not bind his client⁴. Thus, where, in winding up an estate, a solicitor has authority from the executors to receive from stockbrokers the purchase money of stock forming part of the estate, and instead of actually receiving the money he is given credit by the brokers in account with other transactions in exchange for the transfer duly executed by the executors, brokers (who knew the solicitor to be acting as such) are not discharged from their liability to pay the executors, notwithstanding any usage of the International Stock Exchange that a broker is bound only to recognise the person actually employing him⁵.

1 *Blumberg v Life Interests and Reversionary Securities Corp* [1897] 1 Ch 171 (affd [1898] 1 Ch 27, CA); *Kearney v Cullen* [1955] IR 18 at 23. See also **AGENCY** vol 1(2008) PARA 38. In practice, however, payment by cheque or by means of electronic transfer may be regarded as in accordance with reasonable custom and usage: see **AGENCY** vol 1(2008) PARA 44. As to the payment of purchase money on a sale of land see **SALE OF LAND** vol 42 (Reissue) PARA 315.

2 *Bridges v Garrett* (1870) LR 5 CP 451; *Pearson v Scott* (1878) 9 ChD 198.

3 *Pape v Westacott* [1894] 1 QB 272, CA.

4 *Pearson v Scott* (1878) 9 ChD 198 at 204-205. See also **AGENCY** vol 1 (2008) PARA 38.

5 *Baring v Corrie* (1818) 2 B & Ald 137; *Pearson v Scott* (1878) 9 ChD 198 (alleged usage unreasonable).

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793. Investing clients' money and advising as to trust funds.

Normally, it is no part of a solicitor's business to receive clients' money for the purpose of laying it out in unspecified investments or otherwise¹ or to hold clients' money for a long period². However, it is a question of fact in each case, and where a firm negotiated loans and took shares for transmission to lenders as security for loans, a misappropriation by a partner of shares deposited for such a purpose was held to be an act for which the firm was liable³. On the other hand it is within the scope of a solicitor's business to advise trustees whether a particular mortgage or investment is one in which trust money can be invested without breach of trust, and the firm will be liable for the act or omission of a partner in allowing trustees to invest in a security which he should have known was unauthorised⁴.

1 *Harman v Johnson* (1853) 2 E & B 61; *Bourdillon v Roche* (1858) 27 LJ Ch 681; *Cleather v Twisden* (1884) 28 ChD 340 at 346, CA. The distinction between money received to be invested in, eg, a specific mortgage or for investment in an unspecified security originates with the distinction between the business of attorneys and the business of scriveners: see *Re Dufaur, ex p Dufaur* (1852) 2 De GM & G 246; *Bonham v Maycock* (1928) 138 LT 736.

2 As to the Solicitors' Accounts Rules 1998 see PARA 840 et seq.

3 *Rhodes v Moules* [1895] 1 Ch 236, CA. See also PARA 825.

4 *Rae v Meek* (1889) 14 App Cas 558, HL; *Blyth v Fladgate, Morgan v Blyth, Smith v Blyth* [1891] 1 Ch 337; *Brinsden v Williams* [1894] 3 Ch 185. As to whether a firm can be made liable where one partner concurs in a breach of trust or constitutes himself a constructive trustee see PARA 825; and **TRUSTS** vol 48 (2007 Reissue) PARA 1086.

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794. Accepting notice.

A solicitor who generally acts for trustees has no authority, merely because he usually so acts, to receive notice of incumbrance on a share in an estate so as to render the trustees liable for negligence on the ground that they have dealt with the share subsequently without regard to the incumbrance, provided they have not personally had notice of it; on the other hand, the solicitor is not guilty of a breach of warranty of authority merely because he accepted the notice in good faith in the belief that he had such authority, for that is a misapprehension of law, not a misrepresentation of fact¹. Executors are not affected with notice of a claim against the estate which is known to their solicitor but not communicated by him to them or claimed in response to advertisements².

Any notice required or authorised to be given to a person under the insolvency legislation³ may be given instead to his solicitor but only if he has indicated that his solicitor is authorised to accept service on his behalf⁴.

¹ *Saffron Walden Second Benefit Building Society v Rayner* (1880) 14 ChD 406, CA; *Arden v Arden* (1885) 29 ChD 702 at 709; *Re Dallas* [1904] 2 Ch 385 at 398-399, CA, per Buckley J.

² *Re Frewen, Frewen v Frewen* (1889) 60 LT 953. As to notice generally see **EQUITY** vol 16(2) (Reissue) PARA 576 et seq; **MORTGAGE** vol 77 (2010) PARA 267 et seq.

³ I.e. the Insolvency Act 1986 and the Insolvency Rules 1986, SI 1986/1925: see generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

⁴ See the Insolvency Rules 1986, SI 1986/1925, rr 13.1, 13.4; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 797. Cf *Singer v Trustee of the Property of Munro (a bankrupt)* [1981] 3 All ER 215, [1981] 1 WLR 1358, where it was said to be a common fallacy that solicitors have implied authority on behalf of their clients to receive notices.

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C. CONTENTIOUS BUSINESS

795. Requirement as to special authority.

A special authority is essential to entitle a solicitor either to commence an action in his client's name¹ or to appear for and represent him as defendant in an action², or to take part, on his behalf, in any proceedings³. It is, however, open at any time to a purported claimant to ratify the act of the solicitor who started the action, to adopt the proceedings and to instruct him to continue them⁴.

The authority is not retrospective so as to apply to acts done by the solicitor before the action was brought. If, therefore, a solicitor who afterwards appears for a client in a suit has, before action is brought, written a letter making an admission, the admission cannot be taken advantage of in the subsequent action without further proof that the client authorised the communication⁵.

Legal representatives who submit an application for permission to appeal on behalf of a client who has absconded may be regarded as having the actual or implied authority to do so⁶.

1 *Wright v Castle* (1817) 3 Mer 12; *Tabram v Horn* (1827) 1 Man & Ry KB 228; *Lord v Kellett* (1833) 2 My & K 1; *Atkinson v Abbott* (1855) 3 Drew 251; *Wray v Kemp* (1884) 26 ChD 169; *James v Ricknell* (1887) 20 QBD 164, DC (interpleader proceedings); *Re National Old Age Pensions Trust*, *Stevens v Tavener* (1912) 57 Sol Jo 114. Cf *Crook v Wright* (1825) Ry & M 278; *Bewley v Seymour* (1850) 14 Jur 213. Where one solicitor acts for two claimants having separate causes of action arising out of the same facts and for the same wrong, he has a discretion to decide whether to issue two writs or to join both clients as claimants on one writ: *English v Bloom and London Passenger Transport Board*, *Siegenberg v Bloom and London Passenger Transport Board* [1936] 2 KB 550, [1936] 2 All ER 1592. A solicitor who commences proceedings on behalf of a client does not thereby represent that the client has a good cause of action, but merely that he has a client who bears the name of the party to the proceedings and who has authorised him to act: *Nelson v Nelson* [1997] 1 All ER 970, CA. However, the solicitor is not taken to have warranted that the client's name is exactly as it appears in the proceedings: *AMB Generali Holding SEB Trugg Liv Holding AB v Manches* [2005] EWCA Civ 1237, [2006] 1 All ER 437, sub nom *AG v SEB Trygg Liv Holding Aktiebolag* [2005] EWCA Civ 1237, [2006] 1 Lloyd's Rep 318.

2 *Re Gray*, *Gray v Coles* (1891) 65 LT 743. See also *Dent v Halifax* (1809) 1 Taunt 493; *Wright v Castle* (1817) 3 Mer 12; *Drake v Lewin* (1834) 4 Tyr 730; *Spencer v Newton* (1837) 6 Ad & El 630n; *Heinrich v Sutton*, *Re Fiddey* (1871) 6 Ch App 220.

3 Cf PARA 767; *Wheatley v Bastow* (1855) 7 De GM & G 261; *Bird v Harris* (1880) 43 LT 434 (revsd on the facts [1881] WN 5, CA).

4 *Danish Mercantile Co Ltd v Beaumont* [1951] Ch 680, [1951] 1 All ER 925, CA.

5 *Wagstaff v Wilson* (1832) 4 B & Ad 339.

6 *R v Charles*; *R v Tucker* [2001] EWCA Crim 129, [2001] 2 Cr App Rep 233.

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796. Effect of acting without authority.

The fact that a solicitor was not authorised to institute proceedings is not a defence to those proceedings¹ and, although in special circumstances the correct course may be for the court to strike out proceedings instituted without authority², the proper method of raising the question of want of authority is usually by an application to stay the proceedings³. Accordingly, if a solicitor takes, defends or continues proceedings without the authority of the litigant whom he purports to represent, those proceedings will be summarily stayed if the proceedings are instituted without authority, or the defence will be struck out if they are defended without authority⁴, on the application of a party by motion⁵ or summons⁶. Moreover, if proceedings were originally begun or defended with authority, but that authority is revoked and the claim or defence is continued by the solicitor while unauthorised, the position is similar with regard to the proceedings taken during the unauthorised period⁷. If the solicitor has been purporting to act for a claimant the order will direct him to pay the claimant's costs on the standard basis⁸ and also all costs which the claimant may have been ordered to pay to the defendant and the defendant's additional costs on the standard basis⁹. If the solicitor has been purporting to act for a defendant a similar converse order will be made as to costs¹⁰. The court has, however, a discretion, in some cases at any rate, to regularise the proceedings and permit them to continue¹¹. Thus, a litigant may by conduct waive his right to have proceedings stayed¹², and a purported claimant may adopt by ratification proceedings instituted without his authority¹³. Accordingly an application to visit the solicitor with costs, if it is to be made, should be made promptly¹⁴, although it may be made after notice of discontinuance has been given¹⁵. If costs are paid by the opposite party to the solicitor on the assumption that he had authority which in fact he did not have, they may be recovered back as money had and received¹⁶.

The solicitor may, further, in serious cases, be committed¹⁷ for taking proceedings in the name of a person without authority, and in gross cases, where there is fraud, his name may be struck off the roll¹⁸.

1 *Richmond v Branson & Son* [1914] 1 Ch 968. See also *Russian Commercial and Industrial Bank v Comptoir d'Escompte de Mulhouse* [1925] AC 112 at 130, HL; *Banco de Bilbao v Rey* [1938] 2 KB 176 at 181, [1938] 2 All ER 253 at 257, CA.

2 *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307, HL. Cf *West End Hotels Syndicate Ltd v Bayer* (1912) 29 TLR 92.

3 *John Shaw & Sons (Salford) Ltd v Shaw* [1935] 2 KB 113 at 145, CA.

4 In *Yonge v Toynbee* [1910] 1 KB 215, CA, and *Richmond v Branson & Son* [1914] 1 Ch 968 at 974, the plaintiff was mentally incapacitated; in *Geilinger v Gibbs* [1897] 1 Ch 479 a co-plaintiff was a minor; and in *Simmons v Liberal Opinion Ltd, Re Dunn* [1911] 1 KB 966, CA, *Russian Commercial and Industrial Bank v Comptoir d'Escompte de Mulhouse* [1925] AC 112, HL, and *Banco de Bilbao v Rey* [1938] 2 KB 176, [1938] 2 All ER 253, CA, there was a non-existent corporation. See also *Hoskins v Phillips* (1847) 16 LJB 339. In agency cases the application is against the agent: *Ruthin Corp v Adams* (1835) 7 Sim 345. As to the position of a foreign sovereign state see *Carl-Zeiss Stiftung v Rayner and Keeler Ltd (No 2)* [1967] 1 AC 853, [1966] 2 All ER 536, HL. See also notes 8-9. As to the position where the name of a company has been wrongly used as claimant see **COMPANIES** vol 14 (2009) PARA 301.

5 See the cases cited in note 8; *Schjott v Schjott* (1881) 19 ChD 94, CA; *John Morley Building Co v Barras* [1891] 2 Ch 386; *Daimler Co Ltd v Continental Tyre and Rubber Co (Great Britain) Ltd* [1916] 2 AC 307 at 337, HL, per Lord Parker.

6 *Fricker v Van Grutten* [1896] 2 Ch 649, CA; *Yonge v Toynbee* [1910] 1 KB 215, CA; *Fernée v Gorlitz* [1915] 1 Ch 177; *Cooper v Dummett* [1930] WN 248.

7 *Yonge v Toynbee* [1910] 1 KB 215 at 226, 231, CA. The solicitor is liable in respect of costs during the period he was unauthorised, even though he did not know that he was unauthorised: see *Salton v New Beeston Cycle Co* [1900] 1 Ch 43 (dissolution of company).

8 *Allen v Bone* (1841) 4 Beav 493; *Crossley v Crowther* (1851) 9 Hare 384; *Newbiggin-by-the-Sea Gas Co v Armstrong* (1879) 13 ChD 310, CA; *Nurse v Durnford* (1879) 13 ChD 764. See also the cases cited in note 9.

9 *Fricker v Van Grutten* [1896] 2 Ch 649, CA (in so far as this case and those cited in note 8 show that the defendant's costs are taxed on the indemnity basis, they are not now good law; but see *Bank of Ethiopia v National Bank of Egypt and Liguori* [1937] Ch 513 at 523, [1937] 3 All ER 8 at 14, where it seems that the costs were ordered to be taxed as between party and party); *Fernée v Gorlitz* [1915] 1 Ch 177; *Cooper v Dummett* [1930] WN 248. As to the measure of costs see also *Russian and English Bank and Florance Montefiore Guedalla v Baring Bros & Co Ltd* [1935] Ch 120, CA (revsd on another point [1936] AC 405, [1936] 1 All ER 505 at 507, HL).

10 *Bayley v Buckland* (1847) 5 Dow & L 115; *Camps v Marshall* (1873) 8 Ch App 462; *Re Lloyd, Allen v Lloyd* (1879) 12 ChD 447, CA; *Re Gray, Gray v Coles* (1891) 65 LT 743; *Yonge v Toynbee* [1910] 1 KB 215, CA; *Simmons v Liberal Opinion Ltd, Re Dunn* [1911] 1 KB 966, CA; *The Neptune* [1919] P 21n, PC. The measure of costs is stated in accordance with the more recent decisions cited in note 7 and with the principle of the leading case of *Yonge v Toynbee*.

11 *Cooper v Dummett* [1930] WN 248 (discretion to allow next friend to be appointed); see the course taken in *East Pant Du United Lead Mining Co Ltd v Merryweather* (1864) 2 Hem & M 254 (shareholders given opportunity of deciding whether the proceedings by the company should be adopted); *Re Savage* (1880) 15 ChD 557; *Pomery v Pomery* [1909] WN 158 (inquiry as to state of mind). Where, however, the plaintiff was dead when the action was begun the court could not regularise the matter, and the costs of the proceedings, other than those of the application to substitute a new plaintiff, fell on the solicitors who issued the writ, on a common fund (now the standard) basis: *Tetlow v Orela Ltd* (1920) 123 LT 388 at 391.

12 *Re Brocklebank, ex p Brocklebank* (1877) 6 ChD 358, CA. See also *Reynolds v Howell* (1873) LR 8 QB 398 at 400.

13 See PARA 795 text and note 4.

14 See *Wilson v Wilson* (1820) 1 Jac & W 457; *Norton v Cooper, Re Manby and Hawksford, ex p Bitteston* (1856) 3 Sm & G 375; *McNally v Knox* (1861) 5 LT 186.

15 *Gold Reefs of Western Australia Ltd v Dawson* [1897] 1 Ch 115.

16 *Dupen v Keeling* (1829) 4 C & P 102.

17 *Ex p Stuckey* (1791) 2 Cox Eq Cas 283.

18 *Wheatley v Bastow, Re Collins* (1855) 7 De GM & G 558 at 561; *Re Gray, ex p Incorporated Law Society* (1869) 20 LT 730; *Scott v Hitchcock* (1904) 20 TLR 759, where the court found that the plaintiff was a mere puppet of the solicitor. As to professional discipline generally see PARA 907 et seq.

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797. Acts authorised by retainer in litigation.

A solicitor whose name is on the record¹ is authorised:

- 1009 (1) to accept service of all documents which are not required to be served personally²;
- 1010 (2) to make formal written admissions in the course of proceedings for the purposes of those proceedings³;
- 1011 (3) to bind his client⁴ by a compromise of existing⁵ proceedings⁶ on terms which do not involve extraneous matters⁷, unless the client has limited his authority and has communicated that limitation to the other side⁸, and subject to the discretionary power of the court, if its intervention by making an order is required, to inquire into the circumstances and grant or withhold its intervention as it thinks fit⁹;
- 1012 (4) to refer the action to arbitration¹⁰;
- 1013 (5) to receive payment or tender¹¹ of debt¹², damages¹³ or costs¹⁴, except when the litigant or client is under disability¹⁵, or to a particular person¹⁶; and
- 1014 (6) generally to act as the client's authorised agent in all matters which may reasonably be expected to arise for decision in the proceedings¹⁷.

Accordingly, unless expressly authorised, the solicitor cannot bind his client by a compromise which extends to matters outside the action¹⁸, nor bind him to pay unusual expenses¹⁹, and is not authorised to commence substantially new and distinct proceedings such as interpleader proceedings after judgment²⁰, or to receive payment of the debt, damages or costs if his client is under disability or there is an order of the court for payment to particular persons or in a particular manner²¹. Fraud will invalidate acts done by the solicitor on the client's behalf which but for that fraud would bind the client²², and a retainer cannot confer on a solicitor authority to sign documents which by statute, rule or practice are required to be signed by the client personally²³.

1 Thus, the London agent is the proper person to be served: *Petty v Daniel* (1886) 34 ChD 172. A litigant's solicitor or agent should take steps promptly to ensure that his name appears on the record: see *Hunt v Fineburg* (1889) 22 QBD 259, CA.

2 See CPR 6.4(2); and **CIVIL PROCEDURE**.

3 See *Blackburn Building Society v Cunliffe, Brooks & Co* (1882) 22 ChD 61 at 72, CA. As to admissions in relation to children or protected persons see CPR 14.1(4); and **CIVIL PROCEDURE**. Admissions contrary to the facts cannot be made unless expressly so instructed: *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394, CA.

4 Thus, although the client may be bound as against his opponent in litigation by reason of the ostensible authority conferred on the solicitor, the client will have his remedy against the solicitor: *Fray v Voules* (1859) 1 E & E 839. See also *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, [1982] 1 All ER 1095, CA, cited in PARA 786 note 1.

5 See *Macaulay v Polley* [1897] 2 QB 122, CA. Whether a solicitor has authority to compromise after judgment is not settled: see *Lovegrove v White* (1871) LR 6 CP 440; *Re Debtor (No 1 of 1914)*, *ex p Debtor v Petitioning Creditor* [1914] 2 KB 758.

6 *Shepherd v Robinson* [1919] 1 KB 474, CA. See also *Prestwich v Poley* (1865) 18 CBNS 806; *Holt v Jesse* (1876) 3 ChD 177; *Re Newen, Carruthers v Newen* [1903] 1 Ch 812 (compromise by agent); *Little v Spreadbury* [1910] 2 KB 658, DC; *Welsh v Roe* (1918) 87 LJB 520. In considering these cases it is important to bear in mind that, while a solicitor or counsel may have ostensible authority to bind in contract his client to a particular compromise, neither solicitors nor counsel have power to bind the court to act in a particular way, so that if the compromise is one which involves the court in making an order (other than an order merely dismissing the action on the claimant's request), the want of authority may be brought to the court's notice at any time before the grant of its intervention is perfected, ie before the order granting that intervention has been passed and entered, and the court may refuse to permit the order to be perfected: see the cases cited in note 10. So, too, as a matter of policy or practice, when the order has been drawn up and entered, it cannot be discharged by such means on the ground of want of authority in solicitors or counsel, but nevertheless it may be set aside in another action: *Ainsworth v Wilding* [1896] 1 Ch 673. As to a solicitor's authority to compromise proceedings see Cordery's Law relating to Solicitors (7th Edn) 89-91. See also *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, [1982] 1 All ER 1095, CA.

7 *Re Debtor (No 1 of 1914), ex p Debtor v Petitioning Creditor* [1914] 2 KB 758, where the compromise was concluded after judgment, but the true ground of the decision was not the time when the compromise was concluded, but the fact that it extended to matters not in question or involved in the proceedings; *Re Wood, ex p Wenham* (1872) 21 WR 104; *Shepherd v Robinson* [1919] 1 KB 474 at 477, CA; *Gordon v Gordon* [1951] IR 301. Cf *Matthews v Munster* (1887) 20 QBD 141 at 144, CA. The fact that the solicitor has agreed to terms which entitle him to a reasonable additional sum for costs does not make the compromise unauthorised: *M'Laughlin v Pumpherson Oil Co Ltd* 1915 SC 65, Ct of Sess.

8 *Welsh v Roe* (1918) 87 LJB 520. See also *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, [1982] 1 All ER 1095, CA.

9 *Neale v Lennox* [1902] AC 465, HL; *Shepherd v Robinson* [1919] 1 KB 474 at 477, CA. If the parties are of full age and capacity, the court in practice accepts the statement of counsel that the terms are agreed and does not require any inquiry as to authority or a lengthy recapitulation of the facts: see *Swinfen v Swinfen* (1857) 24 Beav 549 at 562-563 (cited as correct for the particular point now stated only); cf *Richmond v Branson & Son* [1914] 1 Ch 968 at 974.

10 *Faviell v Eastern Counties Rly Co* (1848) 2 Exch 344; *Smith v Troup* (1849) 7 CB 757.

11 *Wilmot v Smith* (1828) 3 C & P 453.

12 See *Vorley v Garrad* (1834) 2 Dowl 490; *Hanley v Cassam* (1847) 10 LTOS 189. See also *Yates v Freckleton* (1781) 2 Doug KB 623, which is not now good law in so far as it decides that an agent, being the solicitor on the record, is not entitled to receive payment; *Kearney v Cullen* [1955] IR 18 at 22. Cf *Re Newen, Carruthers v Newen* [1903] 1 Ch 812 at 818-819. To this extent *Robbins v Fennell* (1847) 11 QB 248 at 256 should also not now be followed. A solicitor receiving money for a client receives it as agent for the client: *Burke v Beatty and White* [1928] IR 91 at 96.

13 *Bevins v Hulme* (1846) 15 M & W 88 at 96.

14 *Cox v Salmon* (1836) 2 M & W 127; *Inman v Hill* (1838) 6 Dowl 666; *Mason v Whitehouse* (1838) 6 Scott 575.

15 As to the payment to a solicitor of money payable under an order of the court see PARA 788.

16 *Delfosse v Crawshay* (1834) 4 LJ Ch 32. It is, however, permissible, where property is being sold under order of the court, for the deposit to be paid to the solicitors for the party having conduct of the sale for payment into court: *Biggs v Bree* (1882) 51 LJ Ch 263, CA; *Brown v Farebrother* (1888) 58 LJ Ch 3. Analogously, a receiver directed to pay particular persons should pay them and not the solicitor who has acted for them in the proceedings: *Ind, Coope & Co v Kidd* (1894) 63 LJB 726.

17 See *Re Newen, Carruthers v Newen* [1903] 1 Ch 812 at 818, citing *Prestwich v Poley* (1865) 18 CBNS 806 at 816. As to journeys and other matters involving unusual expenses see PARA 786. Thus, proceedings for ancillary relief in matrimonial proceedings may be fairly considered to be necessary and proper proceedings, and to be part of the general proceedings on a divorce petition, that is to say, proceedings which the solicitor would be bound or at least entitled to conduct without a fresh retainer: *Re Wingfield and Blew* [1904] 2 Ch 665 at 682, CA. See also *Re Wallace, ex p Wallace* (1884) 14 QBD 22, CA, where a solicitor authorised to conduct legal proceedings was held justified in presenting a bankruptcy petition.

18 See note 7.

19 See PARA 786.

20 *James v Ricknell* (1887) 20 QBD 164, DC, on which see *Bagley v Maple & Co Ltd* (1911) 27 TLR 284. It is submitted that the statement in the text is a correct statement of principle, and that the ground on which *James v Ricknell* may be doubted is whether the interpleader proceedings there under consideration were substantially separate proceedings in fact for the purpose of the rule. Cf *Re Wingfield and Blew* [1904] 2 Ch 665 at 682, CA; *Gordon v Gordon* [1904] P 163 at 176, CA.

21 See notes 17-19.

22 See *Flower v Lloyd* (1877) 6 ChD 297 at 302, CA, per James LJ (fraudulent concealment on inspection; dictum instancing fraud of legal adviser); *Williams v Preston* (1882) 20 ChD 672, CA (defence put in fraudulently). The procedure should normally be by separate action if judgment has been perfected: see *Jonesco v Beard* [1930] AC 298, HL; cf note 7.

23 See *Fricker v Van Grutten* [1896] 2 Ch 649, CA (consent to be added as claimant); *Re Prince Blücher, ex p Debtor* [1931] 2 Ch 70, CA (proposal in writing for a scheme of composition).

UPDATE

797 Acts authorised by retainer in litigation

NOTE 2--CPR Pt 6 substituted: SI 2008/2178.

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(iii) Transactions between Solicitor and Client

A. IN GENERAL

798. General principles under the Code.

With limited exceptions¹, a solicitor must not act for a client if there is a conflict of interest². In particular a solicitor must not act for a client if there is a conflict of interest, or a significant risk of such a conflict of interest, between the interests of the client and the interests of the solicitor³. Nor may a solicitor provide alternative dispute resolution services where the solicitor or a person within his firm has acted as mediator or for any party⁴. There are also limited circumstances where a solicitor may act for both seller and buyer in a conveyancing transaction⁵.

The solicitor is under a duty of confidentiality to his client but is also under a duty to disclose all relevant information to his client⁶. Where there is a risk of breaching confidentiality there are limited circumstances where a solicitor may continue to act⁷.

1 For the limited exceptions see the Solicitors' Code of Conduct 2007 rr 3.02, 3.04; and PARA 818. As to the general principles at common law regarding transactions between solicitor and client see PARA 799 et seq.

2 See the Solicitors' Code of Conduct 2007 r 3.01; and PARA 818.

3 See the Solicitors' Code of Conduct 2007 r 3.01(1), (2)(b); and PARA 818. See also r 3.03 (conflict when already acting), r 3.04 (accepting gifts from clients); and PARAS 802, 818.

4 See the Solicitors' Code of Conduct 2007 r 3.06; and PARA 818.

5 See the Solicitors' Code of Conduct 2007 rr 3.07, 3.08, 10.06; and PARAS 818, 872.

6 See the Solicitors' Code of Conduct 2007 rr 4.01, 4.02; and PARAS 740, 799.

7 See the Solicitors' Code of Conduct 2007 rr 4.03-4.05; and PARA 740.

UPDATE

798 General principles under the Code

TEXT AND NOTES 6, 7--Solicitors' Code of Conduct 2007 rr 4.02-4.05 amended on 31 March 2009.

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799. General principles at common law.

In relation to matters occurring prior to the introduction of the Solicitors' Code of Conduct and other relevant rules¹, the following principles apply².

A solicitor³ who enters into a transaction with a client⁴, or on whom a client confers a substantial⁵ benefit other than the solicitor's proper remuneration⁶, by disposition inter vivos⁷, will not be able to uphold the transaction or will not be permitted to retain the benefit, if the transaction is called in question by the client⁸, unless the solicitor can prove to the satisfaction of the court that he disclosed all material facts within his knowledge to the client⁹, and that the transaction was effected by the client in the free exercise of his will and unaffected by any influence which the solicitor either in fact possessed or in law was deemed to possess¹⁰. The stringency of the burden of proof thus placed on the solicitor varies with the circumstances. In the case of a gift, the burden of proof is more difficult to discharge than in the case of a sale or purchase¹¹, and similarly where the client is young, the solicitor's duty to him if not stronger is at least more obvious¹². The relationship of solicitor and client is regarded in equity as a fiduciary relationship, and the rule of equity that a transaction inter vivos is presumed to have been procured by undue influence until the contrary is shown applies to transactions between a solicitor and his client¹³. Accordingly, the question in each case is not merely whether the client understood and intended what he actually did but rather how his intention was procured¹⁴, and decisions which show how the burden of proof may be discharged in the case of other fiduciary relationships are relevant when considering the position as between solicitor and client¹⁵.

Apart from this equitable doctrine, it is the duty of a solicitor, when contracting with his client for a sale or purchase or other transaction, to make full disclosure of all material circumstances known to the solicitor, and failure to make such disclosure may lead to the transaction being set aside¹⁶.

A transaction in relation to which the solicitor cannot discharge the burden of proof placed on him by the rule is voidable but is not void¹⁷. Thus, it can be confirmed by acquiescence or ratification when the solicitor's influence has ceased and the parties are on equal terms¹⁸, or it may be set aside against the solicitor or volunteers claiming under him but cannot be avoided as against purchasers for value unless they took with notice¹⁹. Rescission can only be obtained where restitution to the original position is possible²⁰.

1 I.e. the Solicitors' Code of Conduct 2007 commenced on 1 July 2007; however, similar provisions were contained in the Solicitors' Practice Rules 1990 (see in particular rr 16D, 16E added on 25 April 2006). The Solicitors' Practice Rules 1990 are no longer in force: see the Solicitors' Code of Conduct 2007 r 25.01(2)(a); and PARA 829.

2 See the Solicitors' Code of Conduct 2007 r 3.01(2)(b); and PARA 798.

3 The principle discussed here also applies to persons in a position analogous to that of a solicitor: see *Huguenin v Baseley* (1807) 14 Ves 273 (confidential agent); *Broun v Kennedy* (1863) 33 Beav 133 (affd (1864) 4 De GJ & Sm 217) (counsel); *Tate v Williamson* (1866) 2 Ch App 55 (person appointed by relative to advise young man). See also PARA 1185.

4 It has been said that the rule does not apply where the solicitor is not acting in the matter as solicitor for the client, but this is of little assistance (see *Edwards v Meyrick* (1842) 2 Hare 60 at 68-69), for in order to bring a case within this exception it is necessary for the court to know the circumstances and to be satisfied that from them no duty arose obliging the solicitor to advise the client in the matter, and it seems possible to predicate

this with reasonable certainty only where the solicitor and client were strangers: *Montesquieu v Sandys* (1811) 18 Ves 302 at 313; *Holman v Loynes* (1854) 4 De GM & G 270 at 280-281; *Edwards v Williams* (1863) 32 LJ Ch 763; *Wright v Carter* [1903] 1 Ch 27 at 53, CA; *Allison v Clayhills* (1907) 97 LT 709; *Demerara Bauxite Co Ltd v Hubbard* [1923] AC 673 at 675-676, PC; *McMaster v Byrne* [1952] 1 All ER 1362, PC. Moreover, the solicitor may be placed by circumstances in a position where he fails in his duty if he does not advise his client to take independent advice: see *Willis v Barron* [1902] AC 271 at 284, HL.

5 Trifling gifts are not within the rule unless bad faith can be proved: *Rhodes v Bate* (1866) 1 Ch App 252. Written acknowledgments of indebtedness in respect of statute-barred debts may constitute benefits: *Lloyd v Coote and Ball* [1915] 1 KB 242, DC.

6 See *Savery v King* (1856) 5 HL Cas 627; *Tyrrell v Bank of London* (1862) 10 HL Cas 26; *Re Haslam and Hier-Evans* [1902] 1 Ch 765, CA. In these cases, as in *Tomson v Judge* (1855) 3 Drew 306, the rule is so stated as to apply only if the solicitor obtained some benefit. See also *Hatch v Hatch* (1804) 9 Ves 292 at 297 ('a transaction . . . purporting to be bounty'). No doubt the rule does apply to such cases, but it applies also whether the solicitor has or has not actually obtained a benefit, for in the case of a purchase or sale the burden is on the solicitor to show that the transaction was fair and that he advised the client as diligently as he would have advised a stranger: see *Tomson v Judge* at 313; *Holman v Loynes* (1854) 4 De GM & G 270 at 283; *Wright v Carter* [1903] 1 Ch 27, CA; *Demerara Bauxite Co Ltd v Hubbard* [1923] AC 673, PC. Thus, if a transaction is challenged, it would not suffice for the solicitor to show only that he received no benefit in fact: *Wright v Carter*.

7 Dispositions by will are on a different footing: see PARA 810.

8 The client's rights pass to his assignee, personal representatives or trustee in bankruptcy: see **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 862.

9 See *McMaster v Byrne* [1952] 1 All ER 1362 at 1368-1369, PC. See also *Hanson v Lorenz and Jones* [1986] NLJ Rep 1088, CA where a solicitor was held not liable to account to the client for the profit from a joint venture arrangement where the client understood the terms and effect of the agreement and its terms were fair. A solicitor is under a duty to disclose to a client all information of which he is aware which is material to that client's matter regardless of the source of the information: Solicitors' Code of Conduct 2007 r 4.02. However this is subject to the duty of confidentiality (see PARA 740) and where such disclosure is prohibited by law, expressly excluded or where the solicitor reasonably believes that serious physical or mental injury will be caused to any person if the information is disclosed to a client: see r 4.02. Rule 4 also applies to an overseas practice: r 15.04.

10 See the cases cited in note 4 and *Hanson v Lorenz and Jones* [1986] NLJ Rep 1088, CA, cited in note 9; see also *Gibson v Jeyes* (1801) 6 Ves 266 at 277-278; *Huguenin v Baseley* (1807) 14 Ves 273. For an illustration of excessive remuneration see *Mearns v Knapp* (1889) 37 WR 585. The solicitor's duty may continue after the relationship of solicitor and client in its strict sense has been discontinued: see *McMaster v Byrne* [1952] 1 All ER 1362 at 1368, PC, approving dictum of Parker J in *Allison v Clayhills* (1907) 97 LT 709 at 712.

11 See *Holman v Loynes* (1854) 4 De GM & G 270; *Tomson v Judge* (1855) 3 Drew 306; *Wright v Carter* [1903] 1 Ch 27, CA; and **EQUITY** vol 16(2) (Reissue) para 427. It has been said that in the case of a gift the rule is absolute and that a gift over and above proper remuneration cannot be retained (*Montesquieu v Sandys* (1811) 18 Ves 302 at 313), but the law is not now so strict.

12 *Savery v King* (1856) 5 HL Cas 627 at 656; *Powell v Powell* [1900] 1 Ch 243.

13 See eg *Hatch v Hatch* (1804) 9 Ves 292 at 296-297; **EQUITY** vol 16(2) (Reissue) PARA 427; **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 843 et seq.

14 See *Huguenin v Baseley* (1807) 14 Ves 273 at 300 per Lord Eldon. Cf *Allcard v Skinner* (1887) 36 ChD 145 at 182, CA.

15 See generally **EQUITY** vol 16(2) (Reissue) PARA 417 et seq; **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 843 et seq. Cf *Re Haslam and Hier-Evans* [1902] 1 Ch 765 at 770, CA. The point is of importance with regard to the need for independent advice; it has been said that a transaction of gift or of sale between solicitor and client cannot be upheld in the absence of competent independent advice: *Rhodes v Bate* (1866) 1 Ch App 252 at 257 (gift); see also *Allcard v Skinner* (1887) 36 ChD 145 at 181, CA (gift); *Liles v Terry* [1895] 2 QB 679, CA (gift); *Powell v Powell* [1900] 1 Ch 243 at 246 (gift); *Wright v Carter* [1903] 1 Ch 27 at 57 (gift), and at 60, CA (sale). It is submitted that in no case is it now essential that competent independent advice should have been given in order that a transaction of gift or of sale should be upheld: see *Holman v Loynes* (1854) 4 De GM & G 270 at 284; *Readdy v Pendergast* (1887) 56 LT 790, CA; *Wright v Carter* at 54-55; *Re Coomber, Coomber v Coomber* [1911] 1 Ch 174 (affd [1911] 1 Ch 723 at 726, CA); *Inche Noriah v Shaik Allie Bin Omar* [1929] AC 127 at 135, PC; *Lancashire Loans Ltd v Black* [1934] 1 KB 380 at 413, CA; *Williams v Johnson* [1937] 4 All ER 34, PC; *McMaster v Byrne* [1952] 1 All ER 1362 at 1369, PC; *Re Brocklehurst's Estate, Hall v Roberts* [1978] Ch 14, [1978] 1 All ER 767, CA. The giving to the client of competent independent advice is one means,

and probably the best means, of ensuring that the client is emancipated from any possible influence from the solicitor, but it is not the only means. As to what constitutes competent independent advice, which must be based on full information see *Powell v Powell* per Farwell J (with which cf *Gregg v Kidd* [1956] IR 183); *Wright v Carter* at 60; *Re Coomber*, *Coomber v Coomber* at 729; *Inche Noriah v Shaik Allie Bin Omar* at 135-136; cf *Barnard v Hunter* (1856) 2 Jur NS 1213; *Moxon v Payne* (1873) 8 Ch App 881.

16 *Davies v London and Provincial Marine Insurance Co* (1878) 8 ChD 469; *Nocton v Lord Ashburton* [1914] AC 932 at 965, HL; *Moody v Cox and Hatt* [1917] 2 Ch 71 at 80, CA. Cf *Wright v Carter* [1903] 1 Ch 27, CA, where the obligation to give full information is stated, although it is not there separated from the rebuttal of the presumption of undue influence. See also *McPherson v Watt* (1877) 3 App Cas 254 at 272, HL; *Grahame v A-G of Fiji* [1936] 2 All ER 992 at 1001, PC. There is no legal requirement that advice given by a solicitor to his client should be put in writing: *Harwood v Taylor Vinters (a firm)* [2003] EWHC 471 (Ch), [2003] All ER (D) 278 (Mar).

17 *Allcard v Skinner* (1887) 36 ChD 145 at 186, CA, per Lindley LJ.

18 *Allcard v Skinner* (1887) 36 ChD 145, CA. See also *Stump v Gaby* (1852) 2 De GM & G 623; *Savery v King* (1856) 5 HL Cas 627 at 664; *Moxon v Payne* (1873) 8 Ch App 881; *Tyars v Alsop* (1889) 61 LT 8, CA. Cf *Wood v Downes* (1811) 18 Ves 120 at 130; *Waters v Thorn* (1856) 22 Beav 547 (codicil). As to delay see *Gresley v Mousley* (1859) 4 De G & J 78 at 95-96; *Browne v McClintock* (1873) LR 6 HL 434 at 446, 471; *Armstrong v Jackson* [1917] 2 KB 822 at 830. See also **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARAS 863-864.

19 *Morley v Loughnan* [1893] 1 Ch 736 at 757. See also *Huguenin v Baseley* (1807) 14 Ves 273 at 289; *Bainbrigge v Browne* (1881) 18 ChD 188 at 197; and **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 843.

20 See *Urquhart v Macpherson* (1878) 3 App Cas 831, PC. Cf *Molony v L'Estrange* (1829) Beat 407; *Armstrong v Jackson* [1917] 2 KB 822 at 828 per McCardie J; and **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 785.

UPDATE

799 General principles at common law

NOTES 1, 9--Solicitors' Code of Conduct 2007 rr 4.02, 25.01 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iii) Transactions between Solicitor and Client/A. IN GENERAL/800. Power to order solicitor to deliver cash account etc.

800. Power to order solicitor to deliver cash account etc.

Where the relationship of solicitor and client exists or has existed, the orders which the court may make against the solicitor, on the application¹ of the client or his personal representatives, include any of the following:

- 1015 (1) to deliver a bill or cash account;
- 1016 (2) to pay or deliver up any money or securities;
- 1017 (3) to deliver a list of the moneys or securities which the solicitor has in his possession or control on behalf of the applicant;
- 1018 (4) to pay into or lodge in court any such money or securities².

Where the solicitor alleges that he has a claim for costs against the applicant the court may make an order for the detailed assessment and payment of those costs and securing the payment of the costs or protecting any solicitor's lien³.

¹ An application for such an order must be made by a Part 8 claim form or, if the application is made in existing proceedings, by application notice in accordance with the CPR Pt 23: CPR 67.2(2).

² CPR 67.2(1).

³ CPR 67.2(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iii) Transactions between Solicitor and Client/B. GIFTS/801. Presumption of undue influence.

B. GIFTS

801. Presumption of undue influence.

A gift¹ from a client to his solicitor is presumed to have been made by the client while under the undue influence of the solicitor². The mere position of the parties while the relationship of solicitor and client exists, and until such time as the binding force of the relationship may be taken to have ceased to exist³, renders it very difficult for the solicitor to retain a gift of any real and substantial intrinsic value if the transaction of gift is called in question⁴. Trifling gifts are not within the rule, unless bad faith can be proved⁵. Gifts or benefits to the solicitor's son⁶, or to his wife⁷, even though she may be a near relative, for example a niece of the client⁸, will equally be set aside⁹. The same principle applies where the solicitor is consulted, not strictly as a solicitor, but as a friend of the person consulting him. Thus, where a wife consults her husband's solicitor, she having no solicitor acting for her personally, whether she consults him as a friend or as a legal adviser his duty is the same while he allows her to consult him as if he were her solicitor alone, and, if on that footing he is placed in a position where duties conflict, he should insist that she should consult another solicitor who will be able to act independently on her behalf. If, therefore, while acting under the advice of the husband's solicitor in such circumstances, she makes a gift in favour of the solicitor or his son or other relative, the transaction will be set aside¹⁰.

Where the gift made is of an income-bearing character, such as houses let at a rental or stocks and shares which have earned dividends during the time that the gift remained unimpeached, the solicitor ordered to make restitution will have to account for and pay over to the donor any benefits received by him by virtue of the gift¹¹.

1 As to gifts by will see PARA 810.

2 See PARA 799. As to undue influence generally see **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 839 et seq.

3 See *McMaster v Byrne* [1952] 1 All ER 1362 at 1368, PC; and PARA 799 note 9.

4 *Wright v Carter* [1903] 1 Ch 27 at 50, CA, per Vaughan Williams LJ. See also *Welles v Middleton* (1784) 1 Cox Eq Cas 112 (affd sub nom *Middleton v Wells* (1785) 4 Bro Parl Cas 245, HL); *Hatch v Hatch* (1804) 9 Ves 292; *Harris v Tremeneere* (1808) 15 Ves 34; *Garrett v Wilkinson* (1848) 2 De G & Sm 244; *Re Holmes Estate*, *Woodward v Humpage*, *Bevan's Case* (1861) 3 Giff 337; *O'Brien v Lewis* (1863) 9 Jur NS 321 (on appeal 9 Jur NS 528); *Gardener v Ennar*, *Humby v Moody* (1866) 35 Beav 549; *Liles v Terry* [1895] 2 QB 679, CA.

5 *Rhodes v Bate* (1866) 1 Ch App 252.

6 *Willis v Barron* [1902] AC 271 at 277, HL.

7 *Goddard v Carlisle* (1821) 9 Price 169.

8 *Liles v Terry* [1895] 2 QB 679, CA.

9 *Goddard v Carlisle* (1821) 9 Price 169; *Liles v Terry* [1895] 2 QB 679, CA; *Willis v Barron* [1902] AC 271, HL.

10 See *Willis v Barron* [1902] AC 271 at 283-284, HL.

11 *Adams v Swarder* (1864) 10 LT 49, where the account was directed to be taken on the footing of a wilful default.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iii) Transactions between Solicitor and Client/B. GIFTS/802. Accepting gifts from clients.

802. Accepting gifts from clients.

Where a client proposes to make a significant¹ lifetime gift or a gift on death to, or for the benefit of, a solicitor, any principal, owner or employee, or family member of any principal, owner or employee, of the solicitors' firm, the solicitor must advise the client to take independent advice about the gift, unless the client is a member of the beneficiary's family². If the client refuses the solicitor must stop acting for the client in relation to the gift³.

1 le the gift is of a significant amount, either in itself or having regard to the size of the client's estate and the reasonable expectations of the prospective beneficiaries.

2 Solicitors' Code of Conduct 2007 r 3.04. The Solicitors Regulation Authority does not have the power to waive r 3.04: r 3.23. These provisions also apply to an overseas practice: see r 15.03.

3 Solicitors' Code of Conduct 2007 r 3.04.

UPDATE

802 Accepting gifts from clients

TEXT AND NOTES 2, 3--Solicitors' Code of Conduct 2007 r 3.04 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iii) Transactions between Solicitor and Client/B. GIFTS/803. When a gift to a solicitor is valid.

803. When a gift to a solicitor is valid.

To entitle the solicitor to retain a gift¹ from a client he must show either that it was made at a time when not only the relationship of solicitor and client had ceased² but the influence might rationally be supposed to have ceased also³; or, if it was made while the relationship subsisted, (1) that nonetheless the client should be considered as being wholly free from any influence on the part of the solicitor in relation to the transaction of gift, which can best be done by showing that the gift was a reasonable one and that the client had competent independent advice from another solicitor who was fully informed of all the circumstances⁴; or (2) that it was affirmed by the client after the relationship had ceased⁵. A gift made during the relationship is voidable only, and acquiescence may be sufficient proof that the gift has been affirmed, provided that the solicitor is able to satisfy the court:

- 1019 (a) that the client's conduct amounted to an unequivocal act of acquiescence⁶;
- 1020 (b) that the act of acquiescence took place after the relationship had entirely ceased⁷; and
- 1021 (c) that the client was fully aware of his right to avoid the gift⁸.

The statutes of limitation do not operate to shift the burden of proof from the shoulders of the solicitor to those of the client seeking to impeach the gift, and he must therefore be careful to preserve all the necessary evidence to enable him to support it⁹.

1 Mere gifts are not chargeable to income tax unless they form part of the emoluments of an office or employment or the profits from a trade, profession or vocation: see **INCOME TAXATION** vol 23(1) (Reissue) PARA 9; and *Bloom v Kinder (Inspector of Taxes)* (1958) 38 TC 77, where an ex gratia payment to a solicitor by a company for which he was not acting professionally was held not to be liable to tax.

2 See *McMaster v Byrne* [1952] 1 All ER 1362 at 1368, PC, and PARA 799 note 9.

3 *Holman v Loynes* (1854) 4 De GM & G 270 at 283. Cf PARA 799 note 15.

4 *Hatch v Hatch* (1804) 9 Ves 292; *Mitchell v Homfray* (1881) 8 QBD 587, CA; *Liles v Terry* [1895] 2 QB 679, CA; *Powell v Powell* [1900] 1 Ch 243; *Wright v Carter* [1903] 1 Ch 27, CA. See also *Parfitt v Lawless* (1872) LR 2 P & D 462; *Morgan v Minett* (1877) 6 ChD 638; *Allcard v Skinner* (1887) 36 ChD 145, CA; *Tyars v Alsop* (1889) 61 LT 8, CA; *Willis v Barron* [1902] AC 271, HL. See generally PARA 799 note 13.

5 See **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 863.

6 *Bellew v Russel* (1809) 1 Ball & B 96; *Stump v Gaby* (1852) 2 De GM & G 623.

7 *Gregory v Gregory* (1815) Coop G 201; *Browne v McClintock* (1873) LR 6 HL 434; *Ward v Sharp* (1884) 53 LJ Ch 313.

8 *Molony v L'Estrange* (1829) Beat 407 at 413; *Mitchell v Homfray* (1881) 8 QBD 587, CA; *Allcard v Skinner* (1887) 36 ChD 145, CA; *Tyars v Alsop* (1889) 61 LT 8, CA. Cf *De Bussche v Alt* (1878) 8 ChD 286 at 313, CA, where a profit was made by an agent at his principal's expense. As to acquiescence see **EQUITY** vol 16(2) (Reissue) PARA 909.

9 *Gresley v Mounsley* (1858) 1 Giff 450; affd (1859) 4 De G & J 78.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iii) Transactions between Solicitor and Client/C. PURCHASES AND SALES/804. General principles at common law.

C. PURCHASES AND SALES

804. General principles at common law.

In relation to matters occurring prior to the introduction of the Solicitors' Code of Conduct and other relevant rules¹, the following principles apply².

Where a client sells property and the solicitor acting for him in relation to the sale himself buys it, the transaction can be avoided by the client, however fair or advantageous to him it in fact was, if the solicitor has not disclosed that he is the purchaser³. Moreover, the sale may be set aside or specific performance refused⁴ if the solicitor has not fully disclosed to the client all relevant information known to the solicitor⁵. A similar principle applies where a client purchases property and the solicitor acting for him in relation to the purchase sells his own property⁶.

There is no absolute rule that a solicitor cannot sell property to, or buy property from, a client⁷, but, in order that the transaction may be upheld if it is challenged, the solicitor should preserve such evidence as will enable him to show that the client was advised in the transaction as diligently as he would have been if he had been contracting with a stranger, and that the transaction was as advantageous to the client as it would have been if he had been contracting on reasonable and equal terms with a stranger⁸. For practical purposes the position may be stated thus⁹: a transaction of sale or purchase between a solicitor and his client will be upheld if the solicitor can prove (1) that he made full disclosure to the client of all relevant information known to the solicitor; (2) that the price was fair¹⁰; and (3) that the client was advised by an independent solicitor to whom all circumstances were disclosed¹¹. Where these requirements are satisfied a transaction will not be set aside because the consideration was costs already incurred¹² or because the solicitor resells at a profit¹³.

1 I.e. the Solicitors' Code of Conduct 2007 commenced on 1 July 2007; however, similar provisions were contained in the Solicitors' Practice Rules 1990 (see in particular r 6 commencing on 12 January 2007 and rr 16D, 16E added on 25 April 2006). The Solicitors' Practice Rules 1990 are no longer in force: see the Solicitors' Code of Conduct 2007 r 25.01(2)(a); and PARA 829.

2 See the Solicitors' Code of Conduct 2007 r 3.01(2)(b); and PARA 798.

3 *McPherson v Watt* (1877) 3 App Cas 254 at 264, 272, HL; *Moody v Cox and Hatt* [1917] 2 Ch 71 at 80, CA. This principle is a general one, illustrating the rule that an agent must not place himself in a position where his interests and his duties conflict: see **AGENCY** vol 1 (2008) PARA 89. Similarly, since a mortgagee cannot sell to himself, he may not sell to the solicitor acting for him on the sale: see **MORTGAGE** vol 77 (2010) PARA 466.

4 See *Imeson v Lister* (1920) 149 LT Jo 446 (failure to disclose name of purchaser which might have affected the price, but was not the solicitor's name).

5 *McPherson v Watt* (1877) 3 App Cas 254 at 266, HL; *Davies v London and Provincial Marine Insurance Co* (1878) 8 ChD 469; *Re Haslam and Hier-Evans* [1902] 1 Ch 765 at 770, CA; *Wright v Carter* [1903] 1 Ch 27, CA; *Nocton v Lord Ashburton* [1914] AC 932 at 965, HL; *Moody v Cox and Hatt* [1917] 2 Ch 71, CA. The consequences of taking a secret commission are discussed in PARA 819. See also **AGENCY** vol 1 (2008) PARA 91 et seq.

6 *Tyrrell v Bank of London* (1862) 10 HL Cas 26; *Blair v Martin* [1929] NZLR 225. The solicitor's clerk may be within the rule: *Blair v Martin*.

7 *Edwards v Meyrick* (1842) 2 Hare 60; *Cane v Lord Allen* (1814) 2 Dow 289, HL. See also PARA 799.

8 It is submitted that the principle thus stated is the true principle both of the early and of the later cases: see *Gibson v Jeyes* (1801) 6 Ves 266 at 271; *Tomson v Judge* (1855) 3 Drew 306 at 313; *Pisani v A-G for Gibraltar* (1874) LR 5 PC 516 at 536; *Readdy v Pendergast* (1886) 55 LT 767 (affd as varied (1887) 56 LT 790, CA); *Demerara Bauxite Co Ltd v Hubbard* [1923] AC 673 at 682, PC. Cf *McPherson v Watt* (1877) 3 App Cas 254 at 266, HL; and see generally PARA 799.

9 *Wright v Carter* [1903] 1 Ch 27, CA. Cf PARA 799 note 15. The requirement of independent advice may not strictly be justifiable in law as a necessary requirement, but in practice it is certainly expedient.

10 In determining whether the price paid was a fair one, the circumstances affecting the value of the property at the time of the purchase and known to the parties are alone taken into consideration, and the mere fact that its value greatly increased subsequently will not vitiate the transaction. See the cases cited in notes 12-13.

11 Thus the transaction will be vitiated where it is shown that the solicitor-purchaser was aware of a neglect of duty on the part of the vendor's new adviser, or that the solicitor-purchaser withheld or suppressed material information from such new adviser: *Gibbs v Daniel* (1862) 4 Giff 1. See also *Carter v Palmer* (1841) 8 Cl & Fin 657 at 705, HL.

12 *Montesquieu v Sandys* (1811) 18 Ves 302 at 310; *Edwards v Meyrick* (1842) 2 Hare 60. Cf *Uppington v Bullen* (1842) 2 Dr & War 184 at 188 (prospective costs).

13 *Spencer v Topham* (1856) 22 Beav 573 at 577; *Demerara Bauxite Co Ltd v Hubbard* [1923] AC 673 at 681, PC.

UPDATE

804 General principles at common law

NOTE 1--Solicitors' Code of Conduct 2007 r 25.01 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iii) Transactions between Solicitor and Client/C. PURCHASES AND SALES/805. Particular considerations.

805. Particular considerations.

A purchase of property by the client from the solicitor cannot be upheld if the client pays more than its fair market value¹, or if the solicitor conceals the fact that the property which the client is purchasing is his own². A sale by the client to the solicitor will equally be set aside by the court where the solicitor purchases the property at an undervalue³, although the solicitor need not disclose matters of speculation equally within his own and his client's knowledge⁴. Other circumstances to be taken into consideration are the fact that the client is in difficulties⁵; or the non-payment of the purchase money, the client having only the personal security of the solicitor⁶; or the omission from the contract of terms showing a profit to the solicitor⁷; or the haste with which the sale is completed⁸. The same principle applies to the case of a purchase by the solicitor from the trustee of a bankrupt client where he makes use of knowledge acquired while acting for the client; he cannot be allowed to retain, as against the trustee, an advantage obtained by him in a purchase by means of the knowledge which he has gained while acting as solicitor to the bankrupt⁹.

1 *Mitchinson v Spencer* (1902) 86 LT 618.

2 *Rothschild v Brookman* (1831) 5 Bli NS 165, HL; *Driscoll v Bromley* (1837) 1 Jur 238, 306; *Gillett v Peppercorne* (1840) 3 Beav 78.

3 *Wright v Carter* [1903] 1 Ch 27 at 60, CA, per Stirling LJ. See also *Cane v Lord Allen* (1814) 2 Dow 289, HL; *Savery v King* (1856) 5 HL Cas 627. In such a case one solicitor should not act for both parties: see *Fry v Lane, Re Fry* (1888) 40 ChD 312 at 323-324.

4 *Edwards v Meyrick* (1842) 2 Hare 60 at 74. Cf *Tonkin v Hughes* (1885) 1 TLR 468.

5 *Holman v Loynes* (1854) 4 De GM & G 270; *Gresley v Mousley* (1859) 4 De G & J 78.

6 *Waters v Thorn* (1856) 22 Beav 547.

7 *Tonkin v Hughes* (1855) 1 TLR 468.

8 *Lyddon v Moss* (1859) 4 De G & J 104.

9 *Luddy's Trustee v Peard* (1886) 33 ChD 500 at 519 per Kay J.

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806. Proof of payment by solicitor of purchase price.

Between himself and his client the solicitor must be prepared to prove by evidence other than a receipt in or indorsed on the deed that the purchase money has been paid by him¹. However, as between the client and successors in title of the solicitor a receipt clause in, or a receipt indorsed on, the deed will estop the client from denying payment of the purchase money if the successor in title is a purchaser who bought for valuable consideration, not being a nominal consideration in money, and without notice that the money was not paid², and the fact that the purchaser knew that the solicitor bought from his client is not sufficient notice to disentitle the purchaser to this protection³.

1 *Gresley v Mousley* (1859) 4 De G & J 78.

2 I.e. by virtue of the Law of Property Act 1925 ss 68(1), 205(1)(xxi); and see *Powell v Browne* (1907) 97 LT 854, CA. Cf *Rimmer v Webster* [1902] 2 Ch 163; *Tsang Chuen v Li Po Kwai* [1932] AC 715 at 728, PC; *Abigail v Lapin* [1934] AC 491 at 508, PC. See also **SALE OF LAND** vol 42 (Reissue) PARA 324.

3 *Powell v Browne* (1907) 97 LT 854, CA.

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807. Sale by order of the court.

A solicitor¹ who, under an order of the court², has the conduct of a sale by auction, or who represents any of the parties to the action in which the order is made³, may not bid for the property without the leave of the court⁴, and, except in special circumstances⁵, without the consent of the parties interested⁶. In applying for leave to bid, it is the solicitor's duty to be honest and straightforward in all statements relevant to the duty which the court has to perform in approving the transaction, whether such statements are made voluntarily or in answer to questions, or arise out of the terms of any proposal or preliminary agreement⁷. In the absence of any request for information, he is not bound to lay before the court all the information in his possession. However, if he purports to give the court information on any particular subject with a view to guiding its discretion and obtaining its approval, he is bound to lay before it all the material information which he possesses on that particular subject⁸.

The leave to bid puts an end to the solicitor's disability to purchase on account of his mere position of solicitor on the record for any of the parties. If, therefore, the auction fails he may, under the same leave, bid for and purchase the property by private treaty⁹.

1 This includes his partner: *Price v Moxon* (1754) cited in 2 Ves at 54.

2 As to sales by order of the court see CPR 40.15-40.19; and **SALE OF LAND** vol 42 (Reissue) PARAS 133-136. The same principle applies to the purchase of a bankrupt's property by the solicitor of the trustee: *Ex p James* (1803) 8 Ves 337.

3 *Elworthy v Billing* (1841) 10 Sim 98; *Coaks v Boswell* (1886) 11 App Cas 232, HL. Contrast *Guest v Smythe* (1870) 5 Ch App 551.

4 The court will not readily allow the solicitor to bid if persons interested object: see *Ex p James* (1803) 8 Ves 337. Cf *Atkins v Delemege* (1847) 12 I Eq R 1; *Popham v Exham* (1860) 10 I Ch R 440; *Coaks v Boswell* (1886) 11 App Cas 232 at 241, HL, per Lord Selborne. However, if the sale is to be set aside, the question of concealment or fraud is more important than that of adequacy of price: see *Price v Moxon* (1754) cited in 2 Ves at 54; *Watson v Birch* (1793) 2 Ves 51 at 54.

5 *Re Sedgwick, ex p Watts* (1846) De G 265.

6 *Tennant v Trenchard* (1869) 4 Ch App 537 at 545.

7 *Coaks v Boswell* (1886) 11 App Cas 232 at 236, HL, per Lord Selborne.

8 *Coaks v Boswell* (1886) 11 App Cas 232 at 244, HL, per Lord Fitzgerald.

9 *Coaks v Boswell* (1886) 11 App Cas 232 at 235-242, HL, per Lord Selborne. See also *Turner v Harvey* (1821) Jac 169 at 178; *Pooley v Quilter* (1858) 2 De G & J 327; *Walters v Morgan* (1861) 3 De GF & J 718; *Brooke v Lord Mostyn* (1864) 2 De GJ & Sm 373 (revsd on the facts sub nom *Mostyn v Brooke* (1866) LR 4 HL 304); *Brownlie v Campbell* (1880) 5 App Cas 925 at 950, HL; *Redgrave v Hurd* (1881) 20 ChD 1 at 13, CA.

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D. MORTGAGES

808. Mortgage to solicitor.

In relation to matters occurring prior to the introduction of the Solicitors' Code of Conduct and other relevant rules¹, the following principles apply².

A solicitor is not prohibited from taking security from his client for money advanced, or for costs already due³ or to become due⁴. Indeed, a voidable purchase may be carried into partial effect as a mortgage for the amount of the purchase money⁵. The validity of any mortgage given by the client is governed by the same principles as govern the validity of a sale by the client⁶. The transaction must be in every way a fair transaction, and the solicitor must not reserve for himself any unusual advantage by the form of the mortgage deed⁷ unless fully explained to the client⁸. Thus, the rate of interest charged must not be excessive⁹, and the ordinary right of redemption must not be fettered or restricted¹⁰. Powers to consolidate¹¹, or to sell immediately on default¹², should not be reserved without adequate explanation. If a mortgage cannot be maintained in its entirety the security will nevertheless be considered as valid for the amount due with interest¹³ and, if excessive powers have been exercised, the solicitor may be made liable in damages for resulting loss to the client¹⁴, or the exercise of powers conferred by the mortgage may be restrained pending ascertainment of the amount actually due although, it seems, these powers are valid¹⁵.

1 le the Solicitors' Code of Conduct 2007 commenced on 1 July 2007; however, similar provisions were contained in the Solicitors' Practice Rules 1990 (see in particular r 6 commencing on 12 January 2007 and rr 16D, 16E added on 25 April 2006). The Solicitors' Practice Rules 1990 are no longer in force: see the Solicitors' Code of Conduct 2007 r 25.01(2)(a); and PARA 829.

2 See the Solicitors' Code of Conduct 2007 r 3.01(2)(b); and PARA 798.

3 *Nelson v Booth* (1857) 5 WR 722. As to the effect of taking security for costs see PARA 991.

4 See the Solicitors Act 1974 s 65(1) (contentious business); the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 12(3) (non-contentious business); and PARA 990. A solicitor who pays off his client's mortgage may be deemed to have done so as agent for his client and, although receiving rents, not to be accountable as mortgagee in possession: *Ward v Carttar* (1865) LR 1 Eq 29.

5 *Pearson v Benson* (1860) 28 Beav 598. Cf *Re Riddell, Public Trustee v Riddell* as reported in [1936] 2 All ER 1600, where solicitors who were carrying through a purchase for a client who became incapable themselves temporarily found the purchase money, and were held to have a lien on the property (by virtue, perhaps, of possession of the deeds) for the amount.

6 See *Lawless v Mansfield* (1841) 1 Dr & War 557 at 600; and PARA 799. The position is different if the client is giving security as the price of indulgence from his creditor, the solicitor, who then may make his own terms: *Johnson v Fesemeyer* (1858) 3 De G & J 13; *Pooley's Trustee v Whetham* (1886) 33 ChD 111, CA. To such cases the rule dealt with in the text does not apply, for they are not ordinary mortgage transactions. A mortgage may be set aside for fraud (*Ward v Sharp* (1884) 53 LJ Ch 313), or pressure and undue influence (*Walmesley v Booth* (1741) 2 Atk 25 at 29-30). For the position with regard to proof of payment of the sum advanced, and estoppel of the mortgagor in favour of purchasers see **MORTGAGE** vol 77 (2010) PARA 381. The alteration of the terms of a mortgage in disregard to the interests of persons for whom the solicitor was trustee may be professional misconduct: *Grahame v A-G of Fiji* [1936] 2 All ER 992 at 1002, PC.

7 *Eyre v Hughes* (1876) 2 ChD 148; *Cockburn v Edwards* (1881) 18 ChD 449, CA. Cf *Hiles v Moore* (1848) 17 LJ Ch 385; *Prees v Coke* (1871) 6 Ch App 645.

- 8 *Jones v Linton* (1881) 44 LT 601; *Cockburn v Edwards* (1881) 18 ChD 449, CA.
- 9 *Jones v Linton* (1881) 44 LT 601.
- 10 *Cowdry v Day* (1859) 1 Giff 316; *Biggs v Hoddinott*, *Hoddinott v Biggs* [1898] 2 Ch 307, CA.
- 11 *Climpson v Coles* (1889) 23 QBD 465 at 467, DC.
- 12 *Cockburn v Edwards* (1881) 18 ChD 449, CA; *Craddock v Rogers* (1884) 53 LJ Ch 968 (affd [1885] WN 134, CA). This may not apply in the case of a second mortgage: see *Cockburn v Edwards* at 455-456.
- 13 *Nelson v Booth* (1857) 27 LJ Ch 110; *Macleod v Jones* (1883) 24 ChD 289, CA. See also *Morgan v Higgins* (1859) 1 Giff 270 (mortgage for costs and amount due on settling accounts); *Cheese v Keen* [1908] 1 Ch 245.
- 14 *Cockburn v Edwards* (1881) 18 ChD 449, CA. Costs improperly obtained under a threat of selling are recoverable as money paid under duress: *Close v Phipps* (1844) 7 Man & G 586.
- 15 See *Macleod v Jones* (1883) 24 ChD 289, CA, where the solicitor took a transfer of existing securities and did not himself reserve powers, which might entitle him to sell; he also took a consolidating mortgage in favour of himself, but the report does not show that to have been excessive.

UPDATE

808 Mortgage to solicitor

NOTE 1--Solicitors' Code of Conduct 2007 r 25.01 amended on 31 March 2009.

NOTE 4--SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

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809. Mortgage to client.

The same principles as apply on a mortgage to a solicitor¹ apply where a solicitor borrows from his client. In the preparation of any mortgage or security on behalf of the client, great care should be taken that there is no departure from the usual form in favour of the solicitor, at any rate unless the departure is fully explained to, and is assented to by, the client². The solicitor's real position at the time should also be communicated to the client³; and even in a transaction of release by which a subsequent security of the solicitor's own will become more valuable, the same full disclosure should be made⁴. A solicitor should not rely on an implied authority to sign the acceptance of an offer of a mortgage on behalf of a client; the solicitor ought, in such a case, to ensure that he has express authority to sign on behalf of his client. When a document is signed by the solicitor on behalf of the client, the mortgagee ought to be advised of the capacity in which the solicitor signed the document⁵.

1 See PARA 808.

2 Cf *Pooley's Trustee v Whetham* (1886) 33 ChD 111, CA.

3 *Re A Solicitor, ex p Incorporated Law Society* [1894] 1 QB 254, DC.

4 *Nocton v Lord Ashburton* [1914] AC 932 at 956, HL. Cf *London Loan and Savings Co of Canada v Brickenden* [1933] SCR 257. Failure to disclose the solicitor's personal interest may render him liable in damages to make good the loss: see *Brickenden v London Loan and Savings Co of Canada* [1934] 3 DLR 465, PC.

5 *Re Paul Julian Stanfield, Decision 4391* (1989) 86 LS Gaz (11 October) 48.

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E. WILLS

810. Solicitor as beneficiary under a will.

In relation to matters occurring prior to the introduction of the Solicitors' Code of Conduct and other relevant rules¹, the following principles apply².

A solicitor is allowed to take benefits under wills made by him for his clients³. In order to be permitted to take a relatively large benefit⁴ under a will which he has been instrumental in preparing or procuring⁵, he must, however, be able to show: (1) that the testator was capable of making a will; (2) that the testator knew and approved of its contents; and (3) that there was nothing in the way of undue advantage taken or influence exercised by the solicitor⁶. In every case honesty and prudence suggest that the client should be sent to another solicitor acting quite independently from the solicitor who is to receive the benefit, and that that independent solicitor should preserve a complete record of the instructions given to him by the client and of the advice given when such instructions were taken⁷. Where a solicitor prepares a will under which he is sole executor, this is by itself sufficient to induce the court to appoint a receiver if a suit is pending as to the validity or meaning of the will⁸.

1 The Solicitors' Code of Conduct 2007 commenced on 1 July 2007; however, similar provisions were contained in the Solicitors' Practice Rules 1990 (see in particular rr 16D, 16E added on 25 April 2006). The Solicitors' Practice Rules 1990 are no longer in force: see the Solicitors' Code of Conduct 2007 r 25.01(2)(a); and PARA 829.

2 See the Solicitors' Code of Conduct 2007 r 3.01(2)(b); and PARA 798.

3 *Hindson v Weatherill* (1854) 5 De GM & G 301; *Walker v Smith* (1861) 29 Beav 394; *Parfitt v Lawless* (1872) LR 2 P & D 462. See also *Bogg v Raper* [1998] CLY 4592.

4 The comparative amount is important: see *Barry v Butlin* (1838) 2 Moo PCC 480 at 485.

5 There is a general principle that any person who is instrumental in preparing or procuring a will under which he takes a large benefit may be called upon to show not only that the will was read over to a testator of sound mind and understanding who approved it by subsequently signing it, but also the righteousness of the transaction: *Fulton v Andrew* (1875) LR 7 HL 448 at 472 per Lord Hatherley. The fact that the person benefiting was the testator's solicitor is no doubt a relevant fact and would cause the court to take a strict view of the transaction, but the doctrine of presumed undue influence does not apply: see *Craig v Lamoureux* [1920] AC 349 at 356, PC. Cf *Steward v MacLaren* 1920 SC (HL) 146 at 153 per Lord Dunedin.

6 *Wintle v Nye* [1959] 1 All ER 552, [1959] 1 WLR 284, HL. See also *Barry v Butlin* (1838) 2 Moo PCC 480; *Fulton v Andrew* (1875) LR 7 HL 448 at 471; *Re Osment, Child and Jarvis v Osment* [1914] P 129. See further *Re Birchall, Wilson v Birchall* (1881) 44 LT 243.

7 *Wright v Carter* [1903] 1 Ch 27, CA. As to the need for independent advice generally see PARA 799 note 15.

8 *Hamilton v Girdleston* [1876] WN 202. This case is only briefly reported and the statement in the text is based upon an obiter dictum which may have been too wide. As to the appointment of a receiver against the executor see **RECEIVERS** vol 39(2) (Reissue) PARA 333.

UPDATE

810 Solicitor as beneficiary under a will

NOTE 1--Solicitors' Code of Conduct 2007 r 25.01 amended on 31 March 2009.

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F. SOLICITOR AS TRUSTEE

811. General rule as to profit costs.

A solicitor-trustee acting on behalf of a trust estate¹ is not, in the absence of a clause giving him that power in the will or settlement under which he is trustee, entitled to charge or recover anything from the trust estate for profit costs². Even where costs due in respect of work done by him on behalf of the trust estate have been paid to him, he must account to the trust estate for such portion of them as represents profit³. This principle applies to the profit costs of a firm of solicitors which is retained by a trustee who is a solicitor and a partner in the firm⁴, and to the case of a solicitor-trustee⁵ who employs an independent solicitor, including a London agent⁶, to do work on behalf of his trust estate on agency terms, as regards any profit which the solicitor-trustee may make by reason of such bargain. Where, however, the solicitor is acting for a beneficiary in an action he is allowed to keep his profit charges even though the costs are paid out of the trust estate⁷.

1 As to the charges of a solicitor appointed a trustee in bankruptcy see the Insolvency Rules 1986, SI 1986/1925, r 6.139(3); and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 352.

2 *New v Jones* (1833) 1 Mac & G 668 n; *Christophers v White* (1847) 10 Beav 523; *Re Hill, Claremont v Hill* [1934] Ch 623, CA. See also **EQUITY** vol 16(2) (Reissue) PARA 859; **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 38 et seq; **TRUSTS** vol 48 (2007 Reissue) PARA 934. However, the court has jurisdiction to direct that remuneration be allowed, although this power will only be used sparingly and in exceptional cases: *Re Worthington, ex p Leighton v Macleod* [1954] 1 All ER 677 at 678-679, [1954] 1 WLR 526 at 528 per Upjohn J. See also *Forster v Ridley* (1864) 4 De GJ & Sm 452; *Re Freeman's Settlement Trusts* (1887) 37 ChD 148; *Re Masters, Coutts & Co v Masters* [1953] 1 All ER 19, [1953] 1 WLR 81. Under the general law a trustee is also entitled to remuneration where he has expressly so agreed with the beneficiary before accepting the trust, or where the trust property is in another country whose law allows him remuneration: see **TRUSTS** vol 48 (2007 Reissue) PARA 930 et seq. As to cases where the solicitor is executor or trustee of an implied trust, or where he carries on a trade or business for the benefit of the trust see **TRUSTS** vol 48 (2007 Reissue) PARA 934.

3 *Broughton v Broughton* (1855) 5 De GM & G 160; *Re Corsellis, Lawton v Elwes* (1887) 34 ChD 675, CA.

4 *Re Gates, Arnold v Gates* [1933] Ch 913. If, however, the solicitor-trustee does not employ the firm, ie all the partners including himself, but employs only his partners and there is an arrangement by which the solicitor-trustee is to take no part of the profit costs, then the partners may charge and recover their profit costs: *Re Gates, Arnold v Gates* at 918. See also *Re Hill, Claremont v Hill* [1934] Ch 623, CA.

5 *Re Taylor* (1854) 18 Beav 165; *Vipont v Butler* [1893] WN 64.

6 *Burge v Brutton* (1843) 2 Hare 373.

7 *Re Barber, Burgess v Vinicome* (1886) 34 ChD 77. This is not so in the case of non-contentious business: *Re Barber, Burgess v Vinicome*.

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Exception to general rule.

812. Exception to general rule.

An exception to the general rule that a solicitor-trustee is not entitled to profit costs¹ exists where a solicitor-trustee acts for himself and others who are defendants in an action for administration of the trust property, and the costs have not been increased by the solicitor-trustee so acting beyond what they would have been if he had acted for such co-defendants alone. In such a case the solicitor-trustee is allowed his full costs of having represented the co-defendants for whom he has acted². This exception has been said to be unsound in principle³, and it will probably not be extended. It has been applied to a case where the solicitor-trustee and his co-trustee were respondents to an application for the maintenance of a minor⁴, but it does not apply where a solicitor is a liquidator, even though by virtue of such office he stands in a fiduciary capacity⁵.

1 See PARA 811.

2 *Cradock v Piper* (1850) 1 Mac & G 664; *Lincoln v Windsor* (1851) 9 Hare 158; *Re Barber, Burgess v Vinicome* (1886) 34 ChD 77 at 81 et seq; *Re Corsellis, Lawton v Elwes* (1887) 34 ChD 675, CA. See also **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 41; and **TRUSTS** vol 48 (2007 Reissue) PARA 934.

3 *Re Doody, Fisher v Doody* [1893] 1 Ch 129 at 142, CA. The principle on which *Cradock v Piper* (1850) 1 Mac & G 664 rests is that, when the solicitor-trustee is acting as solicitor for other persons, he is no longer acting in his capacity as trustee.

4 *Re Corsellis, Lawton v Elwes* (1887) 34 ChD 675, CA. See also *Re Smith's Estate* [1894] 1 IR 60.

5 *Re Gertzenstein Ltd* [1937] Ch 115, [1936] 3 All ER 341.

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813. Express provision for profit costs.

The instrument creating a trust may give the solicitor, in spite of the fact that he is a trustee, the right to charge and receive payment of his profit costs¹, and if it does so the solicitor's co-trustees may have his bill taxed (now assessed)². The extent of this right depends upon the language of the instrument under which the solicitor acts³. The words used may be wide enough to entitle the solicitor to charge for all business done by him on behalf of the trust estate, whether it falls within the usual course of a solicitor's business or not⁴. On the other hand, the instrument may empower him to make only the usual professional charges; in this case the allowance will be strictly limited to that kind of work which a solicitor would in the ordinary course of business be necessarily employed by a client to do for him⁵. In preparing the instrument under which he is to act, the solicitor ought not to insert the provision enabling him to charge for non-professional business in the absence of express instructions to that effect from his client⁶.

1 See generally **TRUSTS** vol 48 (2007 Reissue) PARA 930 et seq; **WILLS**. In the case of a will the solicitor cannot charge profit costs if the estate is insolvent, since the provision enabling him to do so is in effect a legacy of profit costs (*Re White, Pennell v Franklin* [1898] 2 Ch 217, CA), although even if the estate is insolvent he may be allowed remuneration by the court in proper cases (*Re Wright, ex p Wood* (1959) 109 L Jo 170). If the estate is insufficient to pay legacies in full, his costs must abate: *Re Brown, Wace v Smith* [1918] WN 118; *O'Higgins v Walsh* [1918] 1 IR 126. Moreover, by attesting a will, a solicitor forfeits his right to charge for his services if he is appointed an executor or trustee by that will (see the Wills Act 1837 s 15; *Re Trotter* [1899] 1 Ch 764), but not if he is only appointed subsequently (*Re Royce's Will Trusts, Tildesley v Tildesley* [1959] Ch 626, [1959] 3 All ER 278, CA). He is, however, entitled to out-of-pocket costs: *Re Shuttleworth, Lilley v Moore* (1911) 55 Sol Jo 366. Where property held under a trust instrument containing a charging clause is subjected to statutory trusts under the Law of Property Act 1925, the solicitor-trustee is entitled to charge for work done in the execution of those statutory trusts: *Re Pedley, Wallace v Wallace* [1927] 2 Ch 168. As to the beneficiaries' right to investigate charges see *Re Wells, Wells v Wells* [1962] 2 All ER 826, [1962] 1 WLR 874, CA.

2 *Re HP Davies & Son* [1917] 1 Ch 216. However, the co-trustees require express power under the trust instrument to be able to settle the charges so as to bind beneficiaries: *Re Fish, Bennett v Bennett* [1893] 2 Ch 413, CA. As to the effect of payment cf PARA 980.

3 As to the liability of a solicitor to bear income tax in respect of his profit costs see **INCOME TAXATION** vol 23(1) (Reissue) PARA 141.

4 *Re Ames, Ames v Taylor* (1883) 25 ChD 72. See also *Ellison v Airey* (1748) 1 Ves Sen 111; *Willis v Kibble* (1839) 1 Beav 559; *Re Wright, ex p Wood* (1959) 109 L Jo 170 (insolvent estate).

5 *Re Chapple, Newton v Chapman* (1884) 27 ChD 584 at 587 per Kay J; *Re Fish, Bennett v Bennett* [1893] 2 Ch 413, CA; *Re Chalinder and Herington* [1907] 1 Ch 58. See also *Re Webb, Lambert v Still* [1894] 1 Ch 73 at 77, CA.

6 *Re Chapple, Newton v Chapman* (1884) 27 ChD 584.

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(iv) Solicitor's Obligations towards his Client

A. IN GENERAL

814. General principles.

The obligations of a solicitor towards his client¹ may be viewed from two aspects, that of equity and that of the common law. In equity the relationship of solicitor and client is recognised as a fiduciary relationship² and carries with it obligations on the solicitor's part to act with strict fairness and openness towards his client. Failure to fulfil this obligation renders a solicitor liable to make compensation in respect of any resulting loss to his client³. By the common law a solicitor's retainer imposes on him an obligation to be skilful and careful⁴. Failure to fulfil this obligation may lead to liability in contract⁵, whether he is acting for reward or gratuitously⁶, and whether he has or has not a practising certificate in force at the time⁷, or to liability in tort for negligence⁸.

A solicitor, like any other individual, is liable for his wrongful acts, and if the circumstances justify the charge he may be made liable to his client for libel⁹ or wrongful interference with goods¹⁰. So, too, when acting as agent for his client he is under the obligations ordinarily imposed by the law of agency upon an agent; for example, he is bound to allow his client to inspect documents relating to an action in which the solicitor acted for the client¹¹.

1 In this connection it is often important, particularly where insurance companies are concerned, to bear in mind that the solicitor's client is the person whom the solicitor represents, ie, in litigation, the party for whom the solicitor is entered on the record as solicitor, and that person is not necessarily the same person as he who is responsible for the solicitor's remuneration: see *Adams v London Improved Motor Coach Builders* [1921] 1 KB 495, CA; *Luck v Meyler* (1928) 72 Sol Jo 337; *Re Crocker, Re Taxation of Costs* [1936] Ch 696 at 701, [1936] 2 All ER 899 at 902-903; *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394, CA. As to the solicitor's obligations to his client see the Solicitors' Code of Conduct 2007 r 2.

2 See PARA 764.

3 See eg *Nocton v Lord Ashburton* [1914] AC 932, HL; *Re Burford, Burford v Clifford* [1932] 2 Ch 122, CA; and **EQUITY** vol 16(2) (Reissue) PARA 854.

4 A solicitor must put at his client's disposal not only his skill but also his knowledge so far as is relevant: *Spector v Ageda* [1973] Ch 30, [1971] 3 All ER 417. As to the solicitor's obligations to third parties see the Solicitors' Code of Conduct 2007 r 10. When a solicitor acting for his client becomes aware of a potential risk to him in relation to which he has not been expressly instructed, he is under a duty to inform his client of that risk: *Credit Lyonnais SA v Russell Jones & Walker (a firm)* [2002] EWHC 1310 (Ch), [2003] Lloyd's Rep PN 7. A solicitor must consider at the outset whether a client is eligible for legal aid: *Truex (a firm) v Kitchin* [2007] EWCA Civ 618, [2007] 2 FLR 1203, [2007] Fam Law 903.

5 *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394, CA.

6 *Donaldson v Haldane* (1840) 7 Cl & Fin 762, HL.

7 *Brown v Tolley* (1874) 31 LT 485.

8 See *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384, [1978] 3 All ER 571; and PARA 820 et seq. Liability may extend to third persons: *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580; *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL; and see eg *Penn v Bristol & West Building Society* [1996] 2 FCR 729, [1995] 2 FLR 938. A solicitor may be liable for careless statements despite the absence of

the relationship of solicitor and client: *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575, HL.

9 *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394, CA.

10 Previously the tort of conversion. See *Fenton Textile Association v Thomas and Clark* (1928) 45 TLR 113; affd (1929) 45 TLR 264, CA.

11 *Re Crocker, Re Taxation of Costs* [1936] Ch 696, [1936] 2 All ER 899. As against third persons, the relationship of solicitor and client is ordinarily one of principal and agent: see PARA 764; and **AGENCY** vol 1 (2008) PARA 71 et seq.

UPDATE

814-819 In general

Solicitors' Code of Conduct 2007 Guidance to r 2 note 2, rr 3, 15, 25.01 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iv) Solicitor's Obligations towards his Client/A. IN GENERAL/815. Standards of conduct; obligations imposed by the Code.

815. Standards of conduct; obligations imposed by the Code.

The Solicitors' Code of Conduct 2007 places duties on a solicitor to ensure that clients are provided with relevant information¹. A solicitor must:

- 1022 (1) identify clearly the client's objective in relation to the work to be done for the client²;
- 1023 (2) give the client a clear explanation of the issues involved and the options available to the client³;
- 1024 (3) agree with the client the next steps to be taken⁴; and
- 1025 (4) keep the client informed of progress, unless otherwise agreed⁵.

A solicitor must at the outset and, as necessary, during the course of the matter:

- 1026 (a) agree an appropriate level of service⁶;
- 1027 (b) explain his responsibilities⁷;
- 1028 (c) explain the client's responsibilities⁸;
- 1029 (d) ensure that the client is given the details of the person dealing with the matter and the name of the person with overall supervision in writing⁹;
- 1030 (e) explain any limitations or conditions arising from any relationship with a third party which affect the steps the solicitor can take on the client's behalf¹⁰.

The client must also be given the best information in writing about the likely overall cost of a matter both at the outset and, when appropriate, as the matter progresses¹¹.

1 See the Solicitors' Code of Conduct 2007 rr 2.02-2.03.

2 Solicitors' Code of Conduct 2007 r 2.02(1)(a).

3 Solicitors' Code of Conduct 2007 r 2.02(1)(b).

4 Solicitors' Code of Conduct 2007 r 2.02(1)(c).

5 Solicitors' Code of Conduct 2007 r 2.02(1)(d).

6 Solicitors' Code of Conduct 2007 r 2.02(2)(a).

7 Solicitors' Code of Conduct 2007 r 2.02(2)(b).

8 Solicitors' Code of Conduct 2007 r 2.02(2)(c).

9 Solicitors' Code of Conduct 2007 r 2.02(2)(d).

10 Solicitors' Code of Conduct 2007 r 2.02(2)(e).

11 Solicitors' Code of Conduct 2007 r 2.03(1). As to information to be provided in particular see r 2.03(1)(a)-(g).

UPDATE

814-819 In general

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Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iv) Solicitor's Obligations towards his Client/A. IN GENERAL/816. Standards of conduct; obligations imposed by the court.

816. Standards of conduct; obligations imposed by the court.

A solicitor is under a professional obligation to observe the standard of conduct required of members of his profession and to conform to the disciplinary regulations applicable to all solicitors¹. These obligations are not enforceable by the client for his own benefit, but a failure to observe them will subject the solicitor to the possibility of punitive action at the instance perhaps of the client². So, too, a solicitor is under obligations to the court as its officer, and these obligations may be enforced in proceedings before the court and may result in compensation being made to the client, although in principle these obligations are not owed by the solicitor to the client but are obligations the observance of which is required of a solicitor by the court before which he practises³.

1 See PARAS 830 et seq, 888 et seq. Breach of the Solicitors' Code of Conduct 2007 r 2 may provide evidence against a solicitor of inadequate professional services under the Solicitors Act 1974 s 37A (prospectively repealed) (see PARA 895): Solicitors' Code of Conduct 2007 guidance note 2.

2 I.e proceedings may be taken before the Solicitors Disciplinary Tribunal: see PARA 906 et seq.

3 *Batten v Wedgwood Coal and Iron Co* (1886) 31 ChD 346. See generally PARA 745 et seq.

UPDATE

814-819 In general

Solicitors' Code of Conduct 2007 Guidance to r 2 note 2, rr 3, 15, 25.01 amended on 31 March 2009.

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817. Common law position of solicitor acting for opposing interests.

In relation to matters occurring prior to the introduction of the Solicitors' Code of Conduct and other relevant rules¹, the following principles apply².

A solicitor who is or has been retained by a client is under an obligation not to disclose confidential information which has come to his knowledge as solicitor for the client³, and, like any other agent but in a higher degree because of his position as an officer of the court and the privileges which the law allows to legal professional confidence, he is bound to observe the utmost good faith towards his client⁴. The court will grant an injunction to prevent any breach of these obligations⁵ and will award damages for an actual breach⁶, but an injunction will not be granted unless mischief will probably flow from the acts which it is sought to restrain⁷. There is, however, no general rule prohibiting a solicitor who has acted in a particular matter for one of the parties from acting subsequently in the same matter for the opposite party, although where a solicitor owes a duty to someone other than a particular client which conflicts with his duty to that client, he is not thereby relieved of any duties to the client⁸. Where a partner in a firm of solicitors which has acted for one party in litigation moves to a new firm and one of the opposing parties then wishes to employ his services as a solicitor, the burden is on that partner to prove that there is no real risk that he has any relevant confidential information which makes it improper for his services to be so employed⁹.

In proceedings of a purely friendly or formal description, where there is no real conflict of interests, a solicitor may properly represent different parties, but as soon as any conflict of interests arises it is the solicitor's duty to cease to represent any party whose interests conflict with those of his other client¹⁰. Thus, where a solicitor has been representing trustees and a minor and the question of compromising the minor's claim arises, the solicitor should arrange for the minor to be separately represented¹¹. The same principle applies in bankruptcy proceedings in regard to the interests of the trustee, the creditors and the bankrupt¹², and, in the management of the affairs of a mentally disordered person, in regard to the interests of his receiver and adverse claimants¹³. So, too, a solicitor should not be appointed receiver in other cases if he represents persons whose interest is to check the receiver's accounts¹⁴, and a solicitor under-sheriff cannot act for a claimant against the execution creditor in interpleader proceedings¹⁵.

A solicitor may only act for both seller and buyer in conveyancing, property selling and mortgage related services under certain circumstances¹⁶. Where the property to be sold is jointly owned, a solicitor instructed by one joint owner must ascertain that he has the other joint owner's authority to act¹⁷.

Where a solicitor does act for both mortgagor and mortgagee, he owes a duty to both clients¹⁸.

1 I.e. the Solicitors' Code of Conduct 2007 commenced on 1 July 2007; however, similar provisions were contained in the Solicitors' Practice Rules 1990 (see in particular r 6 commencing on 12 January 2007 and rr 16D, 16E added on 25 April 2006). The Solicitors' Practice Rules 1990 are no longer in force: see the Solicitors' Code of Conduct 2007 r 25.01(2)(a); and PARA 829.

2 See the Solicitors' Code of Conduct 2007 rr 3.01-3.03; and PARAS 798, 818.

3 See the Solicitors' Code of Conduct 2007 r 4.01; and PARA 740. See *Rakusen v Ellis, Munday and Clarke* [1912] 1 Ch 831, CA, adopting the explanation of *Earl Cholmondeley v Lord Clinton* (1815) 19 Ves 261, given by

Lord Eldon in *Bricheno v Thorp* (1821) Jac 300, and *Beer v Ward* (1821) Jac 77, and approving the dictum of Jessel MR in *Little v Kingswood Collieries Co* (1882) 47 LT 323 at 325, CA. See also *Robinson v Mullett* (1817) 4 Price 353; *Grissell v Peto* (1832) 9 Bing 1; *Johnson v Marriott* (1833) 4 Tyr 78. Protection will be afforded to one of several clients (*Lewis v Smith* (1849) 1 Mac & G 417), or to an executrix and devisee after the death of the client who was the testator (*Biggs v Head* (1837) Sau & Sc 335) or against a partner of the solicitor (*Davies v Clough* (1837) 8 Sim 262; consider the special nature of the evidence on this point in *Rakusen v Ellis, Munday and Clarke*). See *Re a Firm of Solicitors* [1992] QB 959, [1992] 1 All ER 353, CA, where it was held that a firm of solicitors was not allowed to act for a present client against a former client if a reasonable person with knowledge of the facts would reasonably anticipate the danger that information gained by the firm while acting for the former client would be used against him. Where a solicitor has acted previously in unrelated matters for a party he is not required to stand down unless there is a real risk of disclosure of confidential information: *Re T and A (children) (risk of disclosure)* [2000] 1 FCR 659, [2000] 1 FLR 859, CA. An order requiring a party to instruct a new firm of solicitors where a conflict of interest has arisen is invalid if it is made in a positive form; the most the court can do is forbid the claimant from continuing to use a firm of solicitors: *SMC Engineering (Bristol) Ltd v Fraser* [2000] All ER (D) 1673, CA. As to the duty not to act where there is a conflict of interest see the Solicitors' Code of Conduct 2007 r 3; and PARAS 802, 818.

4 *Rakusen v Ellis, Munday and Clarke* [1912] 1 Ch 831 at 840, CA. Cf **AGENCY** vol 1 (2008) PARAS 89-90.

5 See eg *Davies v Clough* (1837) 8 Sim 262; *Lewis v Smith* (1849) 1 Mac & G 417. Similarly, if a clerk by breach of confidence has enabled another person to obtain confidential documents, or, it seems, if such documents are stolen, the court will intervene by injunction to prevent the publication and use of the documents or copies of them: *Lord Ashburton v Pape* [1913] 2 Ch 469, CA; see also PARA 785. See *Marks and Spencer plc v Freshfields Bruckhaus Deringer (a firm)* [2004] EWHC 1337 (Ch), [2004] 3 All ER 773, [2004] 1 WLR 2331 (there has to be a reasonable apprehension of a potential conflict, not a mere theoretical possibility).

6 *Barber v Stone* (1881) 50 LJQB 297, DC. See also **AGENCY** vol 1 (2008) PARA 86.

7 *Rakusen v Ellis, Munday and Clarke* [1912] 1 Ch 831 at 841, CA. Cases involving allegations of dishonesty give rise to a strong prima facie case of mischief rightly anticipated: *David Lee & Co (Lincoln) Ltd v Coward Chance (A Firm)* [1991] Ch 259, [1991] 1 All ER 668.

8 *Moody v Cox and Hatt* [1917] 2 Ch 71 at 81, CA, per Cozens-Hardy MR. The practice of one solicitor acting for both parties invites disaster: see *Smith v Mansi* [1962] 3 All ER 857 at 860, [1963] 1 WLR 26 at 30, CA, per Danckwerts LJ (vendor and purchaser). A solicitor should refuse to act for a person in a transaction to which the solicitor is himself a party with an adverse interest: *Spector v Ageda* [1973] Ch 30, [1971] 3 All ER 417. See also *Neushul v Mellis and Harkavy* (1967) 111 Sol Jo 399, CA. To determine whether the clients' interests are likely to come into conflict, the duties the solicitor owes them have to be considered: *Re a Solicitor* (1987) 131 Sol Jo 1063. In criminal proceedings, a solicitor acting for one defendant cannot, on the termination of his retainer, act for a co-defendant where there is a cut-throat defence between the defendants: *Saminadhan v Khan* [1992] 1 All ER 963n, CA. In the case of conflict a solicitor can act for both parties if he obtains their informed consent: *Clark Boyce v Mouat* [1994] 1 AC 428, [1993] 4 All ER 268, PC. In divorce proceedings, a solicitor who is consulted by one party to the marriage about the other party's behaviour, even if he is not instructed, cannot subsequently act for the other party: *Davies v Davies* [1999] 3 FCR 745, [2000] 1 FLR 39, CA. Where a solicitor representing the interests of a local authority in care proceedings is cohabiting with a solicitor acting for another party to those proceedings, one of them should stand down from acting in relation to the case: *Re L (children) (care proceedings: cohabiting solicitors)* [2001] 1 WLR 100, [2000] 3 FCR 71. See also *Hilton v Barker Booth & Eastwood (a firm)* [2005] UKHL 8, [2005] 1 All ER 651, [2005] 1 WLR 567.

9 See *Re a firm of Solicitors* [1997] Ch 1, [1995] 3 All ER 482. See *Koch Shipping Inc v Richards Butler (a firm)* [2002] EWCA Civ 1280, [2002] 2 All ER (Comm) 957 (no risk of disclosure of relevant confidential information where partner moving to opposing firm undertook not to discuss case with case handlers and to work on separate floor).

10 As to separate advice in cases of family arrangements and gifts see **GIFTS; SETTLEMENTS; MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 839. See also *Gregg v Kidd* [1956] IR 183 at 201.

11 *Howe v Robinson* (1890) Times, 7 July per Kay J.

12 *Ex p Arrowsmith* (1807) 14 Ves 209; *Barber v Stone* (1881) 50 LJQB 297, DC; *Re York, Atkinson v Powell* (1887) 36 ChD 233 at 241.

13 See *Re Wilson* (1877) 21 Sol Jo 770. There is, however, no rule that after the death of the mentally disordered person the receiver's solicitor cannot act for a claimant to the estate: *Re Ferrior, Carrow v Ferrior, Dunn v Ferrior* (1867) 3 Ch App 175 at 181. Cf *Re Strachan* [1895] 1 Ch 439, CA.

14 See **RECEIVERS** vol 39(2) (Reissue) PARA 352.

- 15 See **CIVIL PROCEDURE** vol 12 (2009) PARA 1601.
- 16 See the Solicitors' Code of Conduct 2007 rr 3.07-3.15.
- 17 See eg *Penn v Bristol & West Building Society* [1996] 2 FCR 729, [1995] 2 FLR 938.
- 18 *Mortgage Express Ltd v Bowerman & Partners (a firm)* (1995) Times, 1 August, CA. See also *Bristol and West Building Society v May May & Merrimans (a firm)* [1996] 2 All ER 801 (liability for failure to disclose required information to mortgagor).

UPDATE

814-819 In general

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818. Conflict of interests under the Code.

A solicitor must not act if there is a conflict of interest¹. However a solicitor or the solicitor's firm may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:

- 1031 (1) the different clients have a substantial common interest in relation to that matter or a particular aspect of it²; and
- 1032 (2) all the clients have given in writing their informed consent to the solicitor or the firm acting³.

A solicitor's firm may act for two or more clients in relation to a matter in situations of conflict or possible conflict if:

- 1033 (a) the clients are competing for the same asset which, if attained by one client, will make that asset unattainable to the other client or clients⁴;
- 1034 (b) there is no other conflict, or significant risk of conflict, between the interests of any of the clients in relation to that matter⁵;
- 1035 (c) the clients have confirmed in writing that they want the solicitor's firm to act in the knowledge that the firm acts, or may act, for one or more other clients who are competing for the same asset⁶; and
- 1036 (d) unless the clients specifically agree, no individual acts for, or is responsible for the supervision of, more than one of those clients⁷.

It must be reasonable in all the circumstances for the solicitor or the firm to act when acting in accordance with heads (1), (2), (a)-(d) above⁸.

If a solicitor or his firm is already acting for more than one client in a matter and a conflict arises relating to that matter the solicitor or the firm may only continue to act for one of the clients providing the duty of confidentiality owed to the other client is not put at risk⁹.

1 Solicitors' Code of Conduct 2007 r 3.01(1). There is a conflict of interest if:

- 135 (1) the solicitor or his firm owes separate duties to act in the best interests of two or more clients in relation to the same or related matters and those duties conflict or there is a significant risk that those duties may conflict (r 3.01(2)(a)); or
- 136 (2) the solicitor's duty to act in the best interests of any client in relation to a matter conflicts or there is a significant risk that it may conflict with the solicitor's interests in relation to that or a related matter (which includes any other matter which involves the same asset or liability) (r 3.01(2)(b)).

A solicitor must decline to act where he, a member of his family, or a principal, owner or employee of his firm holds some public office or appointment as a result of which:

- 137 (a) a conflict of interests, or a significant risk of a conflict, arises (r 3.05(a));
- 138 (b) the public might reasonably conclude that the solicitor, or his firm, had been able to make use of the office or appointment for the advantage of the client (r 3.05(b));

139 (c) the solicitor's ability to advise the client properly and impartially is inhibited (r 3.05(c)).

A solicitor who provides alternative dispute resolution must not:

140 (i) advise or act for any party in respect of a dispute in which the solicitor or any person within his firm is acting, or has acted, as mediator (r 3.06(a));

141 (ii) provide alternative dispute resolution services in connection with a matter in which the solicitor or any person within his firm has acted for any party (r 3.06(b));

142 (iii) provide alternative dispute resolution services where the solicitor or any person within his firm has acted for any of the parties in issues not relating to the mediation, unless that has been disclosed to the parties and they consent (r 3.06(c)).

The Solicitors Regulation Authority does not have the power to waive rr 3.01-3.05: r 3.23

There are also several rules that apply in relation to conveyancing or property selling services: see rr 3.07-3.22, 18.03. Rule 3 applies to an overseas practice: see r 15.03. However rr 3.07-3.22 do not apply if the land in question is situated outside England and Wales: see r 15.03.

2 Solicitors' Code of Conduct 2007 r 3.02(1)(a).

3 Solicitors' Code of Conduct 2007 r 3.02(1)(b).

4 Solicitors' Code of Conduct 2007 r 3.02(2)(a).

5 Solicitors' Code of Conduct 2007 r 3.02(2)(b).

6 Solicitors' Code of Conduct 2007 r 3.02(2)(c).

7 Solicitors' Code of Conduct 2007 r 3.02(2)(d).

8 Solicitors' Code of Conduct 2007 r 3.02(3). If a solicitor is relying on the exceptions in r 3.02(1) or 3.02(2) he must:

143 (1) draw all the relevant issues to the attention of the clients before agreeing to act or, where already acting, when the conflict arises or as soon as is reasonably practicable, and in such a way that the clients concerned can understand the issues and the risks involved (r 3.02(4)(a));

144 (2) have a reasonable belief that the clients understand the relevant issues (r 3.02(4)(b)); and

145 (3) be reasonably satisfied that those clients are of full capacity (r 3.02(4)(c)).

9 Solicitors' Code of Conduct 2007 r 3.03.

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814-819 In general

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819. Secret profits.

A solicitor must not, without the knowledge of his client, make any profit or receive any benefit other than his professional remuneration from the transaction which he is retained to carry through¹, and any solicitor who receives a commission from the other party must account for it to his client unless he has his client's permission to keep it². Moreover, the acceptance of a secret profit, or an attempt to obtain one, may be a criminal offence³ and amount to professional misconduct⁴. Thus, if a solicitor who is instructed to effect an insurance policy on behalf of his client receives from the insurers an agency commission, he must account for it to his client in the absence of an agreement between them to the contrary⁵, the burden of establishing which will be on the solicitor⁶.

1 *Tyrrell v Bank of London* (1862) 10 HL Cas 26; *Re Haslam and Hier-Evans* [1902] 1 Ch 765, CA; *Brown v IRC* [1965] AC 244, [1964] 3 All ER 119, HL. See **AGENCY** vol 1 (2008) PARAS 91-94. As to the solicitor as secret vendor of his own property or secret purchaser of his client's property see PARA 804.

2 *Tyrrell v Bank of London* (1862) 10 HL Cas 26. As to a bribe accepted by a solicitor from an opposing litigant see *Islamic Republic of Iran Shipping Lines v Denby* [1987] 1 Lloyd's Rep 367. A principal in a firm must ensure that the firm pays to the client commission over £20 unless the client, having been told of the amount, or if the precise amount is not known, an approximate amount or how the amount is to be calculated, has agreed that the firm may keep it: Solicitors' Code of Conduct 2007 r 2.06. As to what constitutes 'a commission' see the Solicitors' Code of Conduct 2007 guidance notes 53-55. Any commission received in relation to an overseas practice may also be paid to the client unless:

146 (1) the client has been told of the commission and has agreed that the solicitor or the firm may keep the commission (r 15.02(2)(a)(i)); or

147 (2) in all the circumstances (including the law governing the retainer and the prevailing custom of lawyers in the jurisdiction) it is not reasonable to pay the commission to the client (r 15.02(2)(a)(ii), (b)).

3 See the Prevention of Corruption Act 1906 s 1; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 321.

4 *Re A Solicitor, ex p Law Society* (1909) 26 TLR 22.

5 *Workman and Army and Navy Auxiliary Co-operative Supply Ltd v London and Lancashire Fire Insurance Co* (1903) 19 TLR 360 at 362 per Kekewich J. See also *Copp v Lynch and Law Life Assurance Co* (1882) 26 Sol Jo 348; *Jordy v Vanderpump* (1920) 64 Sol Jo 324. The solicitor cannot, however, be committed for failure to comply with an order to pay over this commission: *Re Lord Berwick, Lord Berwick v Lane* (1900) 81 LT 797, CA. As to committal see PARAS 761-762.

6 *Jordy v Vanderpump* (1920) 64 Sol Jo 324.

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814-819 In general

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B. POSSESSION OF LEGAL SKILL AND KNOWLEDGE

820. Liability for negligence.

A solicitor holds himself out to his clients as having adequate skill and knowledge¹ properly to conduct all business that he undertakes, whether contentious² or non-contentious³. He owes a duty to his client both in contract and in tort⁴, and he may be liable to a third person for the tort of negligence⁵. Where the solicitor is in breach of his contractual duty to his client, or where he fails to use proper care and his client or a third person, where he owes a duty of care to that third person⁶, suffers loss⁷ as a result, he is liable in damages⁸ even if the claim in negligence is for purely financial loss⁹. The solicitor's contractual duties to his client may, in some instances, be continuing duties, so that the limitation period¹⁰ runs¹¹ from the date when the obligation becomes impossible of performance or when the client elects to treat the continued non-performance as a repudiation of the contract¹².

A solicitor forfeits his right to receive costs for work done by him which is useless as a result of his negligence¹³.

1 The fact that a case giving guidance to solicitors as to the performance of their duties was not reported in any major series of law reports is a factor in favour of the solicitor: *Pearson v Pearson (Queen's Proctor showing cause)* [1971] P 16, [1969] 3 All ER 323. As to a solicitor's duty of care to a prospective client see *Crossan v Ward Bracewell* [1986] NLJ Rep 849. As to the solicitor's duty to instruct counsel see *Re A (A Minor)* [1988] Fam Law 339, CA. The precise nature of the solicitor's duty depends on the client's experience: *RP Howard Ltd and Richard Alan Witchell v Woodman Matthews & Co* [1983] BCLC 117.

2 A solicitor is not, however, liable in negligence in contentious business circumstances where counsel, if employed, would have enjoyed immunity from suit: see *Rondel v Worsley* [1969] 1 AC 191, [1967] 3 All ER 993, HL; *Saif Ali v Sydney Mitchell & Co (a firm)* [1980] AC 198, [1978] 3 All ER 1033, HL. See also *RP Howard Ltd v Woodman Matthews & Co* [1983] BCLC 117; *Somasundaram v M Julius Melchior & Co (a firm)* [1989] 1 All ER 129, [1988] 1 WLR 1394, CA.

3 *Bulkley v Wilford* (1834) 2 Cl & Fin 102 at 181, HL; *Lanphier v Phipos* (1838) 8 C & P 475 at 479 per Tindal CJ (obiter); *Hart and Hodge v Frame & Son* (1839) 6 Cl & Fin 193, HL; *Parker v Rolls* (1854) 14 CB 691; *Harmer v Cornelius* (1858) 5 CBNS 236 (professional skill generally); *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384 at 402-403, [1978] 3 All ER 571 at 583. See also *Stephens & Co v Allen* (1921) 91 LJPC 32, where solicitors were not estopped from denying negligence by acceptance of a sum paid into court in full satisfaction of their claim for costs, the amount paid into court having been computed by deducting the amount claimed for costs of work which the client alleged had been negligently done. As to insurance against professional negligence see **INSURANCE** vol 25 (2003 Reissue) PARA 692 et seq. As to the necessity for indemnity insurance see PARA 853. See also *RP Howard Ltd and Richard Alan Witchell v Woodman Matthews & Co* [1983] BCLC 117.

4 *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384, [1979] 3 All ER 571 (doubting and not following *Groom v Crocker* [1939] 1 KB 194, [1938] 2 All ER 394; *Clark v Kirby-Smith* [1964] Ch 506, [1964] 2 All ER 835; *Bagot v Stevens, Scanlon & Co Ltd* [1966] 1 QB 197, [1964] 3 All ER 577; *Cook v S* [1967] 1 All ER 299, [1967] 1 WLR 457, CA; *Heywood v Wellers (a firm)* [1976] QB 446, [1976] 1 All ER 300, CA); *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580; *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL. Where a solicitor in a small country town represents a legally aided client with respect to a comparatively small claim, the court should not impose on him too stringent a standard of care: *Balamoan v Holden & Co* [1999] All ER (D) 566, (1999) Independent, 15 June, CA. A solicitor has a duty of care to inform of any potential risk to his client that he is aware of, even where he has not been expressly instructed in relation to the risk: *Credit Lyonnais SA v Russell Jones & Walker* [2002] EWHC 1310 (Ch), [2003] Lloyd's Rep PN 7. The scope of a solicitor's duty of care owed to his client depends on the instructions he receives and the particular circumstances of the case:

Pickersgill v Riley [2004] UKPC 14, [2004] Lloyd's Rep IR 795. See also *Fairbrother v Gabb & Co* [2002] EWCA Civ 803, [2002] All ER (D) 364 (May).

5 *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580; *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL. *Ross v Caunters* was, however, distinguished in *Hemmens v Wilson Browne (a firm)* [1995] Ch 223, [1993] 4 All ER 826 (held that a solicitor did not owe a duty to the beneficiary in an inter vivos transaction; *Caparo Industries plc v Dickman* [1990] 2 AC 605, [1990] 1 All ER 568, HL, applied). Where the solicitor is instructed to prepare a will and is aware of the urgency of the situation he is liable in negligence to the intended beneficiaries if he fails to ensure that the will is duly executed before the death of the testator: *Smith v Claremont Haynes & Co* (1991) Times, 3 September. See *Carr-Glynn v Frearsons (a firm)* [1999] Ch 326, [1998] 4 All ER 225, CA (where solicitor's breach of duty of care to a testator in preparing his will results in a loss to the estate, a duty of care is owed to beneficiary whose gift is rendered ineffective); and *Humblestone v Martin Tolhurst Partnership (a firm)* [2004] EWHC 151 (Ch), (2004) 6 ITEL 900 (solicitor's failure to check valid execution of will resulted in liability to intended beneficiary). The duty imposed by *White v Jones* also applies to lay will-writers: *Esterhuizen v Allied Dunbar Assurance plc* [1998] 2 FLR 668. Where solicitors have failed to include a specific devise in a will, the disappointed beneficiary must bring rectification proceedings and exhaust that remedy before suing for negligence: *Walker v Geo H Medlicott & Son (a firm)* [1999] 1 All ER 685, [1999] 1 WLR 727, CA, unless the rectification proceedings are unlikely to result in material recovery of funds: *Horsfall v Haywards (a firm)* [1999] 1 FLR 1182, CA. See also *Westbury v Sampson* [2001] EWCA Civ 407, [2001] 2 FCR 210, [2002] 1 FLR 166 (solicitor not liable when negligence not causative of any loss).

6 See *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580, where it was held that solicitors who failed to notice that their client's will was attested by a beneficiary's husband owed a duty of care to that beneficiary because it was obvious that carelessness on their part would be likely to cause damage to her, and (applying *M'Alister (Donoghue) v Stevenson* [1932] AC 562, HL) since the loss was directly caused by the solicitors' breach of their duty of care this was not a case in which reliance by the plaintiff was essential to liability; however, reliance is essential where the solicitor negligently makes an untrue statement: if the loss to the claimant occurs without his having relied on that statement, plainly the solicitor has in no way caused the loss (see *Ross v Caunters* at 313 and 592). Cf *Clarke v Bruce Lance & Co (a firm)* [1988] 1 All ER 364, [1988] 1 WLR 881, CA where (distinguishing *Ross v Caunters*) it was held that a solicitor was not liable to a beneficiary when acting for a testator in a transaction which adversely affected the value of the beneficiary's interest. See also *Balfron Trustees Ltd v Peterson* [2001] IRLR 758.

7 Failure to receive an assured benefit is a loss: see *Ross v Caunters* [1980] Ch 297 at 321, [1979] 3 All ER 580 at 598, where a gift by will to a beneficiary failed owing to the negligence of the testator's solicitors. See also *Hinc v Warren Rees & Co (a firm)* [2002] EWCA Civ 764, [2002] 17 EG 157 (CS) (solicitor negligently failed to procure a good title on a conveyance but whilst the claimants were attempting to sell the property the breach did not result in any loss).

8 As to the measure of damages for breach of contract see *Whiteman v Hawkins* (1878) 4 CPD 13, where a mortgagee's solicitor who failed to check that the land was unincumbered was liable for the amount secured by the prior equitable mortgage which had to be paid off; *Otter v Church, Adams, Tatham & Co* [1953] Ch 280, [1953] 1 All ER 168, where personal representatives of a childless tenant in tail whose solicitors failed to advise disentailment recovered as damages the value at his death of the settled estates with income his estate would have received from the estates from his death, subject to an allowance for the chance that on being properly advised he might not have disentailed; *Pilkington v Wood* [1953] Ch 770, [1953] 2 All ER 810, where a purchaser refused to complete because of a defect in title, and the damages recovered by the vendor against the solicitors who acted for him when he bought the property were the difference at the time of the original purchase between the value of the property with a good title and its value with the defect. Where a solicitor is negligent in the conduct of an action (see *Godefroy v Dalton* (1830) 6 Bing 460 at 46-468 per Tindal CJ; *Godefroy v Jay* (1831) 7 Bing 413 at 419) or negligently fails to bring an action, the measure of damages is the amount that the claimant might have recovered in the action if the solicitor had exercised due diligence (*Harrington v Binns* (1863) 3 F & F 942 (failure to sign judgment and issue execution); *Kitchen v RAF Assocn* [1958] 2 All ER 241 at 250, [1958] 1 WLR 563 at 574-575, CA, per Lord Evershed (followed in *Yardley v Coombes* (1963) 107 Sol Jo 575); *Buckley v National Union of General and Municipal Workers* [1967] 3 All ER 767) (failure to bring action within the limitation period)). As to the recovery of damages for anxiety and mental distress caused by negligent conduct of an action see *Cook v S* [1967] 1 All ER 299, [1967] 1 WLR 457, CA, where in a divorce action such damage was held not reasonably foreseeable; *Heywood v Wellers (a firm)* [1976] QB 446, [1976] 1 All ER 300, CA, where mental distress was held to be a foreseeable consequence of solicitors' failure to enforce an injunction to restrain molestation. As to the duty to mitigate damage see *Pilkington v Wood*; see also *Otter v Church, Adams, Tatham & Co*. As to the measure of damages in tort and in contract generally see **DAMAGES** vol 12(1) (Reissue) PARA 851 et seq, 1174 et seq. See also *County Personnel (Employment Agency) Ltd v Alan R Pulver & Co* [1987] 1 All ER 289, [1987] 1 WLR 916, CA. See also *Kennedy v KB Van Emden & Co* (1996) 74 P & CR 19, CA. As to a solicitor's liability in damages for psychiatric illness resulting from the negligent conduct of a case and as to the test of foreseeability to be applied see *McLoughlin v Jones* [2001] EWCA Civ 1743, [2002] QB 1312, [2002] 2 WLR 1279 (foreseeability of harm). A solicitor ought not to be permitted to rely on his own wrongdoing to reduce an award of damages which would otherwise flow from a breach of duty: *Normans Bay Ltd (formerly Illingworth Morris Ltd) v Coudert Brothers (a firm)* [2003]

EWCA Civ 215, (2004) Times, 24 March. Any loss caused by a solicitor's negligence in wrongly advising his client is to be assessed at the date of the breach of duty: *Veitch v Avery* [2007] EWCA Civ 711, (2007) 115 ConLR 70.

9 *Ross v Caunters* [1980] Ch 297 at 315-321, [1979] 3 All ER 580 at 593-598 (applying *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009), where there was 'a high degree of proximity between the negligence and the [financial] loss' (see *Ross v Caunters* at 320-321 and at 598); *Forster v Outred & Co (a firm)* [1982] 2 All ER 753, [1982] 1 WLR 86, CA. As to the recovery of damages for negligence causing purely financial loss see also **NEGLIGENCE** vol 78 (2010) PARA 13. See also *Hurlingham Estates Ltd v Wilde & Partners* [1997] STC 627 (solicitor failed to notice 'tax trap' under the Income and Corporation Taxes Act 1988 s 34(1) when structuring a deal).

10 If the client's right of action against the solicitor has been concealed by fraud the solicitor cannot rely on the Limitation Act 1980 s 32: *Kitchen v Royal Air Forces Association* [1958] 2 All ER 241, [1958] 1 WLR 563, CA. As to the limitation period see **LIMITATION PERIODS**. See also *Forster v Outred & Co (a firm)* [1982] 2 All ER 753, [1982] 1 WLR 86, CA; applied in *DW Moore & Co Ltd v Ferrier* [1988] 1 All ER 400, [1988] 1 WLR 267, CA.

11 As to the time from which the limitation period runs in actions in contract and in tort see **LIMITATION PERIODS**.

12 *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384, [1978] 3 All ER 571.

13 *Hill v Featherstonhaugh* (1831) 7 Bing 569 at 571-572 per Tindal CJ. See also *Pasmore v Birnie* (1817) 2 Stark 59; *Ottley v Gilby* (1845) 8 Beav 602; *Lewis v Samuel* (1846) 8 QB 685; *Stokes v Trumper* (1855) 2 K & J 232; *Re Massey and Carey* (1884) 26 ChD 459, CA; *Heywood v Wellers (a firm)* [1976] QB 446 at 458, [1976] 1 All ER 300 at 306, CA, per Lord Denning MR. In proceedings by a client against a solicitor a declaration to that effect may be obtained: *Groom v Crocker* [1937] 3 All ER 844; on appeal [1939] 1 KB 194, [1938] 2 All ER 394, CA.

UPDATE

820 Liability for negligence

NOTE 4--See *Tom Hoskins plc v EMW Law (a firm)* [2010] EWHC 479 (Ch), [2010] All ER (D) 54 (Apr) (within retainer to ensure that claimant alive to risks of exchanging contracts without obtaining consent in principle); and *Levicom International Holdings BV v Linklaters (a firm)* [2010] EWCA Civ 494, [2010] All ER (D) 81 (May).

NOTE 5--See *Littlewood v Wilkinson Woodward (a firm)* [2009] WTLR 1189 (extent of duty to testatrix where initial instructions contradictory); and *Thames Valley Housing Association Ltd v Elegant Homes (Guernsey) Ltd* [2009] EWHC 2647 (Ch), [2009] All ER (D) 01 (Nov) (failure to fulfil undertaking to release charge over land was negligent).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(6) SOLICITOR AND CLIENT/(iv) Solicitor's Obligations towards his Client/B. POSSESSION OF LEGAL SKILL AND KNOWLEDGE/821. Facts not constituting negligence.

821. Facts not constituting negligence.

A solicitor is not guilty of negligence if he has merely acted upon his client's instructions in the reasonable belief that they were correct¹, or if he has fully explained the position to his client and is nevertheless instructed to proceed², or merely because he has committed an error of judgment, whether on matters of discretion³ or of law⁴, for example on points of new occurrence or of doubtful construction⁵. Where the facts would otherwise establish a case of negligence, the solicitor may escape liability on the ground that he acted upon counsel's advice⁶. For this purpose he must show that the counsel whom he consulted was, in his judgment, a competent person⁷, that the facts of the case were fully laid before counsel⁸, and that he himself merely carried out what counsel had advised⁹. However, counsel's advice is no protection to the solicitor where, in the circumstances, the solicitor ought to have the knowledge himself¹⁰, or where the question is one of practical procedure¹¹, not involving any special difficulty¹².

1 *Lewis v Collard* (1853) 14 CB 208. Cf *Pitman v Francis* (1884) Cab & El 355. See also *Griffiths v Evans* [1953] 2 All ER 1364, [1953] 1 WLR 1424, CA, where a solicitor was held, by majority, not to have been negligent in having failed to advise a workman in receipt of workman's compensation that he had an alternative claim at common law; and *Carradine Properties Ltd v DJ Freeman & Co (a firm)* (1982) 126 Sol Jo 157, CA (failure to ask experienced client whether he is insured against a claim).

2 *Lee v Dixon* (1863) 3 F & F 744. Cf *Stewart v M'Lean, Baird and Neilson* 1915 SC 13, Ct of Sess. A solicitor acting for both parties in a mortgage was not negligent where he had advised the parties to obtain independent advice and had explained the legal implications of the transaction to them: *Clark Boyce v Mouat* [1994] 1 AC 428, [1993] 4 All ER 268, PC. A solicitor is not liable in negligence for loss caused by the default of a foreign lawyer instructed by the solicitor to carry out a property transaction in the foreign jurisdiction, where the client has been told of the need to instruct the foreign lawyer: *Gregory v Shepherds (a firm)* (1999) Times, 18 February, DC.

3 *Hill v Finney* (1865) 4 F & F 616 at 625n; *Faithfull v Kesteven* (1910) 103 LT 56, CA.

4 *Shilcock v Passman* (1836) 7 C & P 289; *Hart v Frame* (1839) 6 Cl & Fin 193, HL; *Purves v Landell* (1845) 12 Cl & Fin 91, HL.

5 *Stevenson v Rowand* (1830) 2 Dow & Cl 104 at 119, HL; *Godefroy v Dalton* (1830) 6 Bing 460; *Kemp v Burt* (1833) 4 B & Ad 424; *Re Sadd* (1865) 34 Beav 650.

6 See *Francis v Francis and Dickerson* [1956] P 87, [1955] 3 All ER 836; *Cook v S* [1966] 1 All ER 248, [1966] 1 WLR 635 (point not raised on appeal [1967] 1 All ER 299, [1967] 1 WLR 457, CA). See, however, *Re A (a Minor)* [1988] Fam Law 339, CA, as to the duty of a solicitor to instruct competent counsel.

7 Cf *Chapman v Chapman* (1870) LR 9 Eq 276 (surveyors).

8 *Ireson v Pearman* (1825) 3 B & C 799; *Hawkins v Harwood* (1849) 4 Exch 503. Cf *Clarke v Couchman* (1885) 20 L Jo 318.

9 *Godefroy v Dalton* (1830) 6 Bing 460; *Potts v Sparrow* (1834) 6 C & P 749; *Andrews v Hawley* (1857) 26 LJ Ex 323. Cf *Re Clark* (1851) 1 De GM & G 43.

10 *Godefroy v Dalton* (1830) 6 Bing 460; *Bryan v Twigg* (1834) 3 LJ Ch 114. Cf *Re Clark* (1851) 1 De GM & G 43. See *Green v Hancocks (a firm)* [2000] All ER (D) 957 (capacity of client to commence proceedings within competence of ordinary high street solicitor; solicitor not entitled to rely on advice of barrister).

11 *Russel v Palmer* (1767) 2 Wils 325; *Baikie v Chandless* (1811) 3 Camp 17. Cf *Compton v Chandless* (1802) cited in 3 Camp at 19.

12 *Laidler v Elliott* (1825) 3 B & C 738.

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822. Negligence in contentious matters.

The immunity from negligence in contentious matters when providing any legal services in relation to any proceedings in any court which would be provided by a barrister if one were briefed, which solicitors previously possessed, no longer exists¹. The immunity of barristers and solicitor advocates is no longer in the public interest in either civil or criminal proceedings².

Where counsel has been briefed, a solicitor has been held liable for negligence where:

- 1037 (1) before bringing the action, he failed to make proper investigation into the cause of action³, or, knowing that the client had done some act which would preclude him from recovering, neglected to point this out⁴;
- 1038 (2) he advised the client to enter into litigation even though success was improbable and though counsel's advice was against the action being brought⁵;
- 1039 (3) he proceeded under a wrong statute or section of a statute⁶;
- 1040 (4) he failed to issue or renew a writ in time to prevent the application of what is now the Limitation Act 1980⁷;
- 1041 (5) he brought an action in the wrong court, for example where he sued in the High Court although, owing to the amount claimed, the action ought to have been brought in a county court⁸, or where he sued in an inferior court, although he knew that the cause of action arose outside its jurisdiction⁹;
- 1042 (6) there was inexcusable delay in the prosecution of the claim¹⁰;
- 1043 (7) he failed to inform the trustee of a bankrupt that if he brought an action without the consent of the creditors he would be liable to pay costs out of his own pocket¹¹;
- 1044 (8) he failed to prepare the case properly for trial¹²;
- 1045 (9) on the trial of an action, he neglected without reasonable excuse to instruct counsel to appear on his client's behalf¹³, or abandoned the defence of the action without informing his client¹⁴;
- 1046 (10) he failed to see that a material witness whom his client had undertaken to call was in court when wanted, with the result that his client lost his action¹⁵;
- 1047 (11) there being a good defence to an action, he allowed judgment to go by default¹⁶;
- 1048 (12) in a proper case he failed to issue execution¹⁷;
- 1049 (13) he did not communicate an offer of compromise to his client¹⁸;
- 1050 (14) he advised a hopeless appeal which could not benefit the client¹⁹;
- 1051 (15) he neglected to register a pending action²⁰.

The solicitor's duty to protect the interests of his client may require the instruction of different counsel if it appears that the client's interests are not being protected as the result of counsel's incompetence²¹.

1 The Courts and Legal Services Act 1990 s 62(1) (repealed) was expressed to apply to a person 'who is not a barrister': s 62(1)(a) (repealed).

2 *Arthur JS Hall & Co v Simons*; *Barratt v Ansell (t/a Woolf Seddon (a firm))*; *Harris v Schofield Roberts & Hill (a firm)* [2002] 1 AC 615, [2000] 3 All ER 673, HL (applied by *Lai v Chamberlains* [2006] NZSC 70, [2007] 4 LRC

79 but not followed by *Nudd v R* [2006] HCA 9, [2006] 4 LRC 278). The standard of care to be applied in negligence actions against an advocate is the same as that applicable to any other skilled professional who has to work in an environment where decisions and exercises of judgment have to be made in often difficult and time constrained circumstances: per Lord Hobhouse of Woodborough *Arthur JS Hall & Co v Simons*; *Barratt v Ansell (t/a Woolf Seddon (a firm))*; *Harris v Schofield Roberts & Hill (a firm)* [2002] 1 AC 615 at 737, [2000] 3 All ER 673 at 736, HL. See also PARA 1144.

3 *Gill v Lougher* (1830) 1 Cr & J 170; *Ottley v Gilby* (1845) 8 Beav 602.

4 *Jacks v Bell* (1828) 3 C & P 316.

5 *Re Clark* (1851) 1 De GM & G 43.

6 *Hart and Hodge v Frame, Son & Co* (1839) 6 Cl & Fin 193, HL.

7 *Hunter v Caldwell* (1847) 10 QB 69; *Yardley v Coombes* (1963) 107 Sol Jo 575. See also *Kitchen v Royal Air Force Association* [1958] 2 All ER 241, [1958] 1 WLR 563, CA (cause of action concealed 'by fraud'); *Malyon v Lawrance, Messer & Co* [1968] 2 Lloyd's Rep 539, where the solicitor's delay caused the plaintiff severe anxiety and loss to his business for which he recovered damages from the solicitors.

8 *Lee v Dixon* (1863) 3 F & F 744. Cf *Barker v Fleetwood Improvement Comrs* (1890) 62 LT 831 (affd 6 TLR 430, CA); *Heywood v Wellers (a firm)* [1976] QB 446, [1976] 1 All ER 300, CA, where proceedings more suitable to the magistrates' court were begun in the High Court.

9 *Williams v Gibbs* (1836) 5 Ad & EL 208. Cf *Cox v Leech* (1857) 1 CBNS 617.

10 See *Fitzpatrick v Batger & Co Ltd* [1967] 2 All ER 657, [1967] 1 WLR 706, CA; *Allen v Sir Alfred McAlpine & Sons Ltd* [1968] 2 QB 229, [1968] 1 All ER 543, CA.

11 *Allison v Rayner* (1827) 7 B & C 441 at 443.

12 *Manley v Palacke* (1895) 73 LT 98, PC; *Roe v Robert McGregor & Sons Ltd* [1968] 2 All ER 636, [1968] 1 WLR 925, CA, where it was held that there was no duty on the defendant's solicitor to interview a passenger in the plaintiff's car. See *Dickinson v Jones Alexander & Co* [1993] 2 FLR 521, [1990] Fam Law 137 concerning negligent advice on ancillary relief given to a wife.

13 *De Roufigny v Peale* (1811) 3 Taunt 484; *Hawkins v Harwood* (1849) 4 Exch 503. Cf *Townley v Jones* (1860) 8 CBNS 289. See also *Mainz v Charles and James Dodd (a firm)* (1978) 122 Sol Jo 645, where solicitors were negligent in taking six months to obtain counsel's opinion in a stale action.

14 *Luck v Meyler* (1928) 72 Sol Jo 337 (solicitor looking to insurance company for costs).

15 *Reece v Righy* (1821) 4 B & Ald 202. Cf *Hatch v Lewis* (1861) 2 F & F 467 at 472, and contrast *Price v Bullen* (1824) 3 LJOSKB 39.

16 *Godefroy v Jay* (1831) 7 Bing 413. See also *Cook v Swinfen* [1967] 1 All ER 299, [1967] 1 WLR 457, CA (divorce suit allowed to go through undefended).

17 *Ridley v Tiplady* (1855) 20 Beav 44; *Fray v Foster* (1859) 1 F & F 681; *Harrington v Binns* (1863) 3 F & F 942. Cf *Bevins v Hulme* (1846) 15 M & W 88.

18 *Sill v Thomas* (1839) 8 C & P 762.

19 *Harbin v Masterman* [1896] 1 Ch 351, CA.

20 *Plant v Pearman* (1872) 41 LJQB 169.

21 *Re A (a minor)* [1988] Fam Law 339, CA.

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823. Negligence in non-contentious matters.

It is a solicitor's duty to carry out non-contentious matters according to the regular method prescribed by statute, rule or custom¹. Thus, he is not to be deemed to be guilty of neglect or breach of duty by reason of his omission in good faith to negative the giving, inclusion, implication or application of any of the powers, covenants, provisions, stipulations and words which under the Law of Property Act 1925 are deemed to be included or implied in any instrument or are made applicable by that Act to any contract for sale or other transaction, or to insert or apply any others in their place².

A solicitor will, however, be guilty of negligence where:

- 1052 (1) he fails to explain adequately to the client any document which is to be executed by the client, such as a deed or will³, a bill of sale⁴, a lease or a mortgage executed by the client as guarantor⁵, and where he fails to warn a testator about the requisite formalities of attesting a will and on the return of the will fails to check that it has been properly attested⁶;
- 1053 (2) in acting for the settlor under a voluntary settlement, he fails to see that all usual clauses, such as an ultimate power of appointment in the settlor's favour after the specific trusts have been worked out, are inserted⁷, and to point out to his client the statutory provisions relating to voluntary conveyances⁸, or to preserve strict evidence of the settlor's ability to pay his then existing debts without the aid of the settled property⁹;
- 1054 (3) in acting for a mortgagee, he fails to require production of the deeds relating to the property, and his client in order to sell under his mortgage has to pay off a prior equitable mortgagee¹⁰, or where, having reason to be doubtful of the solvency of the mortgagor, he fails to make the usual and proper searches in bankruptcy¹¹, or where he fails to give the proper notices to secure priority for a charge taken on his client's behalf¹², or where he advises an investment without seeing that the security is adequate in amount as well as sufficient and proper in point of form¹³; or he fails to inform them that there is a second mortgage on the property¹⁴;
- 1055 (4) in acting for a vendor, he allows an unusual covenant to be inserted in the conveyance, and neglects to explain its effect¹⁵;
- 1056 (5) in acting for a purchaser, he fails to ensure that his client is aware of the existence of an incumbrance¹⁶;
- 1057 (6) in acting for a purchaser of leasehold property, he fails to investigate the vendor's title¹⁷, or to require production of the head lease¹⁸, or the last receipt for ground rent¹⁹;
- 1058 (7) in acting for a purchaser of a property, he fails to inform the purchaser that the local authority has not approved plans for the erection of his proposed house but relies upon the promise of the vendor (also his client) to obtain the necessary approval²⁰, or where the property consists of vacant land and he fails to search the commons register²¹, or where, if the property is subject to a tenancy, he fails to make sufficient inquiries as to the recoverable rent and rent limit²², or where he fails to register an option to purchase²³;

- 1059 (8) in drawing up an agreement on behalf of his client, he fails to insert a necessary stipulation²⁴, or, if a seal is essential to its validity, neglects to make it under seal²⁵;
- 1060 (9) in acting for a company he fails to advise the company's board of the statutory requirement to obtain the approval of members for a property transaction involving company's directors²⁶.

A solicitor is also liable to his client if he loses or mislays his deeds²⁷, or if he fails to communicate to his client facts which involve a particular course of action contemplated by the client being attended by risk²⁸, or if he fails to ensure that a life policy, forming part of the security for a mortgage, is in force by the date of completion²⁹.

He is not, however, under any obligation to draw his client's attention to the fact that the contract that is to be carried through cannot be enforced against the client³⁰, nor is the solicitor liable for honestly understating the amount of a rentcharge charged on land where he did not know that a greater amount was in fact charged³¹, nor, in the absence of special instructions, for failing to remind the client of the date for exercising an option to determine a lease, but does owe a duty to inform him of the time limit for lodging an appeal against the determination of rent at a rent review³². A solicitor acting for a vendor in a normal conveyancing transaction does not, however, owe a duty to a prospective purchaser when answering inquiries before contract³³.

A solicitor who is acting for both mortgagor and mortgagee is under no duty to go beyond the scope of instructions by proffering unsought advice on the wisdom of the transaction where a client is in full command of his faculties and aware of what he is doing³⁴.

A general duty of care exists in relation to the giving of references³⁵.

1 See eg *Simmons v Pennington & Son* [1955] 1 All ER 240, [1955] 1 WLR 183, CA, where a vendor's solicitor so answered a requisition that the purchaser was enabled to repudiate, and he subsequently advised the vendor not to resell the property during the pendency of proceedings by the purchaser. The property was destroyed by fire, and it was held in an action for negligence by the vendor against the solicitor that the solicitor was not negligent in answering the requisition as the reply was given in accordance with general conveyancing practice and the consequences could not reasonably have been foreseen, and, even if the advice against resale was negligent, damage by fire was too remote. See also *Al-Sabah v Ali* [1999] All ER (D) 49; and *Mercantile Credit Co Ltd v Fenwick; Mercantile Credit Co Ltd v Speechly Bircham* [1999] 2 FLR 110, [1999] Fam Law 143, CA.

2 See the Law of Property Act 1925 s 182(1); and **TRUSTS** vol 48 (2007 Reissue) PARA 1116. As to implied covenants for title see also the Law of Property (Miscellaneous Provisions) Act 1994 Pt I (ss 1-13); and **REAL PROPERTY**.

3 *Henshall v Fereday* (1873) 27 LT 743; *Morrell v Morrell* (1882) 7 PD 68 at 73; *Horan v MacMahon* (1886) 17 LR Ir 641 (Ir CA). It is the solicitor's duty to see his client before preparing a will for him: *Clery v Barry* (1887) 21 LR Ir 152 (Ir CA). Cf *Aylwin v Aylwin* [1902] P 203. As to failure to advise disentailing see *Otter v Church, Adams, Tatham & Co* [1953] Ch 280, [1953] 1 All ER 168. In certain circumstances a solicitor might be negligent in failing to advise that a will which he was instructed to prepare would be revoked by a forthcoming marriage: *Hall v Meyrick* [1957] 2 QB 455, [1957] 2 All ER 722, CA. A solicitor owes a duty of care to a known beneficiary under a will which he is drawing up: *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580; *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL. See also **WILLS**.

4 *Re Haynes, ex p National Mercantile Bank* (1880) 15 ChD 42 at 52, CA.

5 *Sykes v Midland Bank Executor and Trustee Co Ltd* [1971] 1 QB 113, [1970] 2 All ER 471, CA, where the solicitor was negligent in not drawing his client's attention to unusual clauses in the lease; *Forster v Outred & Co (a firm)* [1982] 2 All ER 753, [1982] 1 WLR 86, CA (effect of signing as guarantor). See also *County Personnel (Employment Agency) Ltd v Alan R Pulver & Co* [1987] 1 All ER 289, [1987] 1 WLR 916, CA, concerning the solicitor's duty to explain an unusual clause in a lease.

6 *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580.

7 *James v Couchman* (1885) 29 ChD 212.

8 Eg the Insolvency Act 1986 s 339: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARAS 654-655.

9 *Re Butterworth, ex p Russell* (1882) 19 ChD 588 at 597, CA.

10 *Whiteman v Hawkins* (1878) 4 CPD 13. Cf *Wilson v Tucker* (1822) 3 Stark 154; and see *Agra Bank Ltd v Barry* (1874) LR 7 HL 135.

11 *Cooper v Stephenson* (1852) 16 Jur 424.

12 *Stevenson v Rowand* (1830) 2 Dow & CI 104, HL; *Donaldson v Haldane* (1840) 7 CI & Fin 762, HL; *Watts v Porter* (1854) 3 E & B 743; *Bean v Wade* (1885) Cab & E 1519 (on appeal 2 TLR 157, CA). It is his duty to register the mortgage, if registration is necessary: *Re Patent Bread Machinery Co, ex p Valpy and Chaplin* (1872) 7 Ch App 289.

13 *Langdon v Godfrey* (1865) 4 F & F 445; *Stokes v Prance* [1898] 1 Ch 212. Cf *Brumbridge v Massey* (1858) 28 LJ Ex 59; *Scholes v Brook* (1891) 63 LT 837 (affd 64 LT 674, CA); *Learoyd v Alston* [1913] AC 529, HL. See also *Howell v Young* (1826) 5 B & C 259; *Green v Dixon* (1837) 1 Jur 137. A solicitor is under no duty to ensure that the client does not exchange contracts before his financial arrangements are secured, but must warn of the danger: *Buckland v Mackesy* (1968) 112 Sol Jo 841, CA.

14 See *Bristol & West Building Society v Mothew* [1998] Ch 1, [1996] 4 All ER 698, CA.

15 *Stannard v Ullithorne* (1834) 10 Bing 491. In the absence of specific instructions the solicitor has no duty to advise on the proposed price for a sale of land: *Bowdage v Harold Michelmores & Co* (1962) 106 Sol Jo 512.

16 *Piper v Daybell, Court-Cooper & Co* (1969) 210 Estates Gazette 1047. See also *Booth v Davey* [1988] NLJR 104, CA, where a solicitor's duty to his client was discharged by reading to the client the contract of sale for the purchase of an hotel. A purchaser's solicitor giving a standard form of undertaking to the purchaser's mortgagee to acquire a 'good marketable title' is not obliged to acquire a title free from incumbrances: *Barclays Bank plc v Weeks Legg & Dean (a firm)*; *Barclays Bank plc v Layton Lougher & Co (a firm)*; *Mohamed v Fahiya (NE Hopkin John & Co (a firm), third party)* [1999] QB 309, [1998] 3 All ER 213, CA (distinguished in *Lloyd's Bank plc v Parker Bullen (a firm)* [1999] EGCS 107, [1999] All ER (D) 814 (a duty extends to informing the lender whether there were onerous covenants in the lease)).

17 *De Montmorency v Devereux* (1840) 7 CI & Fin 188, HL; *Allen v Clark* (1863) 7 LT 781. See, however, *British Mutual Investment Co v Cobbold* (1875) LR 19 Eq 627.

18 *Allen v Clark* (1863) 7 LT 781. See also *Hill v Harris* [1965] 2 QB 601, [1965] 2 All ER 358, CA.

19 *Waine v Kempster* (1859) 1 F & F 695.

20 *Lake v Bushby* [1949] 2 All ER 964. See also *Ford v White & Co* [1964] 2 All ER 755, [1964] 1 WLR 885.

21 *G & K Ladenbau (UK) Ltd v Crawley and de Reya (a firm)* [1978] 1 All ER 682, [1978] 1 WLR 266.

22 *Goody v Baring* [1956] 2 All ER 11, [1956] 1 WLR 448.

23 *Midland Bank Trust Co Ltd v Hett, Stubbs and Kemp (a firm)* [1979] Ch 384, [1978] 3 All ER 571.

24 See *Theodore Goddard v Fletcher King Services Ltd* [1997] 2 EGLR 131, [1997] 32 EG 90 (a solicitor was negligently failed to include an 'upwards-only' rent review clause in a lease as instructed, and a managing surveyor shared the liability for failing to notice the mistake). However, a solicitor who has made a mistake in the preparation of a document will not be ordered to pay the costs of a suit for its rectification, although he may be sued for negligence: *Clark v Girdwood* (1877) 7 ChD 9, CA. See also **MISTAKE** vol 77 (2010) PARA 44. As to relief in such a case see **MISTAKE** vol 77 (2010) PARA 34. As to solicitors' duty of care when drafting a document, see *Summit Financial Group Ltd v Slaughter & May (a firm)* (1999) Times, 2 April, [1999] All ER (D) 264 (if the drafting of the two parts of a document was split between different departments of a legal firm it was essential for someone with sufficiently general legal experience to have overall responsibility for reviewing the document as a whole).

25 *Parker v Rolls* (1854) 14 CB 691.

26 See *British Racing Drivers' Club Ltd v Hextall Erskine & Co (a firm)* [1996] 3 All ER 667.

27 *Wilmott v Elkington* (1833) 1 Nev & MKB 749; *Reeve v Palmer* (1859) 5 CBNS 84 (detinue).

- 28 *Ashton v Wainwright* [1936] 1 All ER 805, where the fact that the justices' clerk had refused to perform the ministerial act of registering the change of premises of a club was not communicated to the clients. Cf *Duchess of Argyll v Beuselinck* [1972] 2 Lloyd's Rep 172, where failure to advise on tax liability was not in the circumstances negligent.
- 29 *McLellan v Fletcher* [1987] NLJ Rep 593.
- 30 *Bartter v Gambrill* (1932) 76 Sol Jo 868.
- 31 *Ellis v Sampson* (1927) 71 Sol Jo 621.
- 32 *Yager v Fishman & Co and Teff and Teff* [1944] 1 All ER 552, CA. Cf *Clark v Kirby-Smith* [1964] Ch 506, [1964] 2 All ER 835, where failure to apply for a new tenancy was held to be negligent. Failure to advise a client about the time limit for appealing against a rent review assessment was held to be negligent: *Corfield v DS Boshier & Co* [1992] 1 EGLR 163.
- 33 *Gran Gelato Ltd v Richcliff (Group) Ltd* [1992] Ch 560, [1992] 1 All ER 865.
- 34 *Clark Boyce v Mouat* [1994] 1 AC 428, [1993] 4 All ER 268, PC. The solicitor's duty depends on what he is instructed to do, and the scope of the duty depends partly on the extent to which the client needs advice: *National Home Loans Corp'n plc v Giffen Couch & Archer (a firm)* [1997] 3 All ER 808, [1998] 1 WLR 207, CA. See also *Bristol and West Building Society v Fancy & Jackson (a firm)* [1997] 4 All ER 582, [1997] NPC 109; *Zwebner v Mortgage Corp'n Ltd* [1998] EGCS 104, [1998] PNLR 769, CA; *Portman Building Society v Bevan Ashford* (1999) 80 P & CR 239, [2000] 1 EGLR 81, CA.
- 35 See *Spring v Guardian Assurance plc* [1994] 3 All ER 129, [1994] ICR 596, HL; *Edwards v Lee* [1991] NLJR 1517.

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C. LIABILITY FOR ACTS OF AGENTS OTHER THAN PARTNERS

824. Delegation of authority.

A solicitor undertaking any kind of business on behalf of a client is bound to give to it that amount of personal attention which it reasonably requires. If, therefore, he hands it over to an agent to carry it through for him, he is responsible for the agent's acts and defaults¹. Thus, he is liable for any want of care, knowledge or honesty in his clerk² or his London agent³, and he can be made liable under the jurisdiction of the Supreme Court over its officers for the misconduct of his clerk within the scope of his authority⁴. He is not, however, responsible for agents employed by him on the client's behalf to do other than legal work, such as a stockbroker, accountant or surveyor, unless knowledge of the agent's incompetence can be proved against him⁵. It is also his duty to give proper instructions to any agent whom he may employ to conduct the client's business. If the solicitor instructs counsel, he is bound to prepare or to give counsel verbally adequate instructions to enable him properly to lay the case before the court⁶, but here his liability under this head ceases. Thus, if he has properly instructed counsel who fails to attend, he is not responsible for counsel's default⁷. However where a solicitor instructs an overseas solicitor to act on his behalf in connection with the purchase of a property he is responsible for checking the searches have been carried out before handing over the purchase money⁸.

A solicitor is responsible for money paid to and misappropriated by a clerk only if the client shows that the clerk either had authority to receive the money, or was held out as having such authority in such manner that the client reasonably believed in his authority and that the client relied on that belief⁹. Therefore, in the case of fraud by a clerk, the solicitor will be responsible if the matter was one which it would have been within the clerk's authority to carry through in an honest manner¹⁰.

1 See **AGENCY** vol 1 (2008) PARA 48 et seq. A receipt or certificate given on behalf of a firm of solicitors by a clerk authorised to do so should be signed by him personally for the firm: see *Practice Direction* [1953] 2 All ER 1234, [1953] 1 WLR 1395.

2 *Floyd v Nangle* (1747) 3 Atk 568 (cf PARA 755); *Curlewis v Broad* (1862) 1 H & C 322 (process server); *Lloyd v Grace, Smith & Co* [1912] AC 716, HL (fraud of clerk); *Heywood v Wellers (a firm)* [1976] QB 446, [1976] 1 All ER 300, CA.

3 *Simmons v Rose, Weeks v Ward, Re Ward* (1862) 31 Beav 1 at 11. As to London agents see PARA 1022 et seq.

4 *Myers v Elman* [1940] AC 282, [1939] 4 All ER 484, HL. As to this jurisdiction see PARA 745. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

5 *Mercer v King* (1859) 1 F & F 490; *Chapman v Chapman* (1870) LR 9 Eq 276; *Carruthers v Hodgson* (1896) 100 LT Jo 395. If he pays his client's money into a bank and mixes it with his own, he is liable to make it good if the bank fails, even though he acted in good faith (*Robinson v Ward* (1825) 2 C & P 59), but this point should not now arise as he must pay such money into a separate account for clients' money (see PARA 838 et seq).

6 *R v Tew* (1752) Say 50; *De Rouffigny v Peale* (1811) 3 Taunt 484; *Dauntley v Hyde* (1841) 6 Jur 133.

7 *Lowry v Guilford* (1832) 5 C & P 234.

8 *Gregory v Shepherds (a firm)* (2000) 81 P & CR 113, [2000] 3 EGLR 49, CA.

9 *Terrill v Parker and Thomas* (1915) 32 TLR 48.

10 See the statement of principle in *Algemeene Bankvereeniging v Langton* (1935) 40 Com Cas 247 at 258, CA; *Lloyd v Grace, Smith & Co* [1912] AC 716, HL; and see *London County Freehold and Leasehold Properties Ltd v Berkeley Property and Investment Co Ltd* [1936] 2 All ER 1039, CA, where a reply to an inquiry was written by the managing clerk of a vendor's solicitor, above the solicitor's signature, and contained information supplied by the manager of the vendor, which was to his knowledge untrue. As to the solicitor's liability for misrepresentations made by his agent see **MISREPRESENTATION AND FRAUD** vol 31 (2003 Reissue) PARA 797.

UPDATE

824 Delegation of authority

NOTE 4--Appointed day is 1 October 2009: SI 2009/1604.

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D. LIABILITY FOR ACTS OF PARTNERS

825. Authority of partners.

Each partner in a firm of solicitors acting within the scope of his apparent authority as a partner binds his co-partners unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner¹. Thus, prima facie, each partner binds the firm when in the ordinary course of business he gives an undertaking², or is guilty of negligence³, fraud⁴ or misconduct⁵. Where, however, one partner pledges the credit of the firm for a purpose apparently not connected with its business as a firm of solicitors, the firm is not bound unless that partner was specially authorised by the others to do so⁶. Thus, in the absence of special authority to the partner so purporting to contract, the firm is not liable upon his promissory note⁷, bill of exchange⁸ or post-dated cheque⁹, or upon an undertaking to pay a debt and costs on behalf of a client¹⁰; nor is the firm liable for the fraud of a partner acting in his private capacity, such as mortgagor¹¹, administrator¹² or trustee¹³, nor for the misconduct of a partner in allowing a stranger to make use of the firm name¹⁴. It is not within the scope of a solicitor's business to constitute himself a constructive trustee and, therefore, his doing so does not bind and make liable as a constructive trustee a partner who is not aware of the dealings establishing the constructive trusteeship¹⁵.

Similarly, where a partner receives money or securities from or on behalf of a client, and misappropriates them, the firm is liable, provided they came to the hands of the partner in the ordinary course of business¹⁶. Solicitors are not, however, as such, scriveners¹⁷. If, therefore, without the knowledge of his co-partners, a partner receives money or securities for safe custody or on deposit until an investment can be found, the firm is not liable¹⁸. To render the firm liable, it must be shown that the receipt of the money or securities was authorised¹⁹ or ratified²⁰ by his co-partners, or that they consented to his having a general authority to act without their knowing what he did²¹. On the other hand, the firm is liable when the money is received for the purpose of being invested in a specific security²² and for negligence in advising trustees upon the question whether a particular security was in law a proper trust investment²³.

1 See the Partnership Act 1890 s 5; and **PARTNERSHIP** vol 79 (2008) PARA 45.

2 *Alliance Bank Ltd v Tucker* (1867) 17 LT 13. See also *United Bank of Kuwait Ltd v Hammoud, City Trust Ltd v Levy* [1988] 3 All ER 418, [1988] 1 WLR 1051, CA (security for a loan).

3 *Rew v Lane* (1856) 5 WR 110. An example is where a member of the firm acts as advocate and is insufficiently instructed: *Clarke v Couchman* (1885) 20 L Jo 318.

4 *Brydges v Branfil* (1842) 12 Sim 369; *Sawyer v Goodwin* (1867) 36 LJ Ch 578; *Phosphate Sewage Co v Hartmont* (1877) 5 ChD 394 at 443, CA. See generally **PARTNERSHIP** vol 79 (2008) PARA 65 et seq. See also *Lovell v Hicks* (1837) 2 Y & C Ex 472, where it was held that joint owners of a patent were liable for the fraud of one of them in relation to the working of a patent.

5 *Norton v Cooper, Re Manby and Hawksford, ex p Bittleston* (1856) 3 Sm & G 375.

6 Partnership Act 1890 s 7. See also *Cleather v Twisden* (1884) 28 ChD 340, CA; and **PARTNERSHIP** vol 79 (2008) PARA 53.

7 *Hedley v Bainbridge* (1842) 3 QB 316; *Levy v Pyne* (1842) Car & M 453; *Smith v Coleman* (1843) 7 Jur 1053.

8 *Garland v Jacomb* (1873) LR 8 Exch 216, Ex Ch, where a bill of exchange was indorsed in the firm name in respect of a private matter of the partner indorsing it. The position with regard to cheques may well be different as a result of a firm's usage. See also **PARTNERSHIP** vol 79 (2008) PARA 60.

9 *Forster v Mackreth* (1867) LR 2 Exch 163, where, however, there was abundant evidence that both partners had power to draw cheques in the firm name.

10 *Hasleham v Young* (1844) 5 QB 833.

11 *Hughes v Twisden* (1886) 55 LJ Ch 481.

12 *Chilton v Cooke* (1879) Times, 2 July, CA.

13 *Coomer v Bromley* (1852) 5 De G & Sm 532; *Palmer v S* (1907) 51 Sol Jo 653. It makes no difference that the money is used for the purposes of the firm, except that a partner is liable if he has notice of the breach of trust and the firm is liable to the extent to which the trust money remains in the possession or under the control of the firm: see *Re Moxon, ex p Heaton* (1819) Buck 386; *Re Harford, ex p Poulson* (1844) De G 79. In special circumstances incoming partners were held not liable even though they knew of the breach of trust: *Twyford v Trail* (1834) 7 Sim 92. Where the other partners are implicated in the breach of trust, the liability arising from it is not merely joint, but joint and several: see *Re Acraman, ex p Woodin* (1843) 3 Mont D & De G 399; *Blyth v Fladgate, Morgan v Blyth, Smith v Blyth* [1891] 1 Ch 337 at 353. When a firm of solicitors acts for trustees and one of the members of the firm is an express trustee, his partners are not liable for his defaults in that character as distinguished from defaults as a solicitor: *Re Fryer, Martindale v Picquot* (1857) 3 K & J 317, where it was held that the money was received by the solicitor in his capacity of trustee and not as solicitor.

14 *Marsh v Joseph* [1897] 1 Ch 213, CA.

15 *Re Biddulph, ex p Burton* (1843) 3 Mont D & De G 364; *Mara v Browne* [1896] 1 Ch 199 at 208, 212, 214, CA; *Re Bell's Indenture, Bell v Hickley* [1980] 3 All ER 425, [1980] 1 WLR 1217. See, however, *Blyth v Fladgate, Morgan v Blyth, Smith v Blyth* [1891] 1 Ch 337.

16 *Moore v Smith* (1851) 14 Beav 393; *Atkinson v Mackreth* (1866) LR 2 Eq 570; *Earl Dundonald v Masterman* (1869) LR 7 Eq 504; *Biggs v Bree* (1882) 51 LJ Ch 263, CA; *Tendring Hundred Waterworks Co v Jones* [1903] 2 Ch 615. Cf *Hackney v Knight* (1891) 7 TLR 254 (managing clerk); *Lloyd v Grace, Smith & Co* [1912] AC 716, HL (managing clerk). See further **PARTNERSHIP** vol 79 (2008) PARA 75. For the same principle as it applies to a firm of bankers see *Marsh v Keating* (1834) 2 Cl & Fin 250, HL; *Sadler v Lee* (1843) 6 Beav 324; *Reid v Rigby & Co* [1894] 2 QB 40. See also *Dixon v Wilkinson* (1859) 4 De G & J 508.

17 *Harman v Johnson* (1853) 2 E & B 61; *Plumer v Gregory* (1874) LR 18 Eq 621. The business of a scrivener consisted of (1) receiving money to place it out at interest and supplying those who wished to raise money on security; and (2) drawing contracts. See PARA 793.

18 *Sims v Brutton* (1850) 5 Exch 802; *Harman v Johnson* (1853) 2 E & B 61; *Re Lawrence, Crowdy and Bowlby, ex p Burdon* (1854) 2 Sm & G 367; *Bourdillon v Roche* (1858) 27 LJ Ch 681. Cf *Hills v Reeves* (1882) 31 WR 209, CA. See also *Bishop v Countess of Jersey* (1854) 2 Drew 143.

19 *Blair v Bromley* (1847) 2 Ph 354; *St Aubyn v Smart* (1868) 3 Ch App 646; *Slack v Parker* (1886) 54 LT 212.

20 *Cleather v Twisden* (1884) 28 ChD 340, CA, distinguished in *Rhodes v Moules* [1895] 1 Ch 236, CA.

21 *Cleather v Twisden* (1884) 28 ChD 340 at 350, CA, per Bowen LJ.

22 *Willet v Chambers* (1778) 2 Cowp 814; *Blair v Bromley* (1847) 2 Ph 354; *Harman v Johnson* (1853) 2 E & B 61; *Eager v Barnes* (1862) 31 Beav 579; *Plumer v Gregory* (1874) LR 18 Eq 621; *Hughes v Twisden* (1886) 55 LJ Ch 481; *Moore v Knight* [1891] 1 Ch 547.

23 See PARA 793; and cf PARA 823 note 13.

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(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS

(i) In general

826. Introduction.

The professional conduct of solicitors is now mainly governed by the Solicitors Act 1974, the Solicitors' Code of Conduct 2007 and rules made under the Solicitors Act 1974¹. However non-statutory misconduct is still relevant in considering the conduct of solicitors prior to 1 July 2007².

In relation to European cross-border practice³ the Council of the Bars and Law Societies of Europe Code of Conduct applies⁴.

1 See PARA 828 et seq.

2 The date at which the Solicitors' Code of Conduct 2007 came into force: see PARA 830 note 1. The court is entitled to assume that counsel and solicitors have not acted unprofessionally or in breach of the rules of professional conduct unless there is a sound evidential basis for reaching the contrary conclusion: *R v Greaves* [2008] EWCA Crim 647, (2008) Times, 28 April, [2008] All ER (D) 389 (Apr).

3 As to the meaning of 'European cross-border practice' see PARA 827 note 1.

4 See PARA 827 note 1.

UPDATE

826-829 In general

Solicitors' Code of Conduct 2007 rr 15, 16, 22, 23, 25 amended on 31 March 2009.

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827. European cross-border practice.

In relation to European cross-border practice¹ the Council of the Bars and Law Societies of Europe Code of Conduct applies². Much of that Code is duplicated in the Solicitors' Code of Conduct 2007, which additionally makes provision for specific aspects of the European Code not otherwise covered³, in relation to:

- 1061 (1) occupations considered incompatible with legal practice⁴;
- 1062 (2) fee sharing with non-lawyers⁵;
- 1063 (3) co-operation between lawyers of different CCBE states⁶;
- 1064 (4) correspondence between lawyers in different CCBE states⁷;
- 1065 (5) paying referral fees to non-lawyers⁸; and
- 1066 (6) disputes between lawyers in different members states⁹.

1 'European cross-border practice' means:

148 (1) any professional activity in a CCBE state other than the UK, whether or not physically present in that CCBE state (Solicitors' Code of Conduct 2007 r 16.01(1)(a)(i)); and

149 (2) any professional contact with a lawyer of a CCBE state other than the UK (r 16.01(1)(a)(ii)).

However for the purposes of r 16.01 professional contacts and professional activities taking place within a firm or in-house legal department are not European cross-border practice: r 16.01(1)(b). 'CCBE state' means any state whose legal profession is a full member, an associate member or an observer member of the Council of the Bars and Law Societies of Europe Code of Conduct: Solicitors' Code of Conduct 2007 r 24.01.

2 See the Solicitors' Code of Conduct 2007 r 16. This rule applies:

150 (1) in relation to a solicitor, to his European cross-border practice from an office in, or outside, England and Wales (see r 16.01(2)(a));

151 (2) in relation to a registered European lawyer, to his European cross-border practice from an office within the UK (see r 16.01(2)(b));

152 (3) in relation to a registered foreign lawyer who is a partner in a multi-national partnership, a director of a recognised body which is a company, or a member of a recognised body which is a limited liability partnership within the meaning of the Limited Liability Partnerships Act 2000, to the European cross-border practice from an office in England or Wales (see the Solicitors' Code of Conduct 2007 rr 16.01(2)(c), 24.01);

153 (4) to a recognised body incorporated in England and Wales in relation to its European cross-border practice from an office in, or outside, England and Wales (see r 16.01(2)(d)); and

154 (5) to a recognised body incorporated outside England and Wales in relation to its European cross-border practice from an office outside England and Wales (see r 16.01(2)(e)).

3 See the Solicitors' Code of Conduct 2007 r 16, which also applies to an overseas practice to the extent that such practice is a European cross-border practice: see r 15.16.

4 See the Solicitors' Code of Conduct 2007 r 16.02.

5 See the Solicitors' Code of Conduct 2007 r 16.03.

6 See the Solicitors' Code of Conduct 2007 r 16.04.

- 7 See the Solicitors' Code of Conduct 2007 r 16.05.
- 8 See the Solicitors' Code of Conduct 2007 r 16.06.
- 9 See the Solicitors' Code of Conduct 2007 r 16.07.

UPDATE

826-829 In general

Solicitors' Code of Conduct 2007 rr 15, 16, 22, 23, 25 amended on 31 March 2009.

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828. Power to make Code of Conduct and rules.

The Solicitors Regulation Authority¹ may make rules² for regulating in respect of any matter the professional practice, conduct and discipline of solicitors and for empowering the Authority to take such action as may be appropriate to enable the Authority to ascertain whether or not the provisions of rules made, or of any code or guidance issued, by the Authority are being complied with³. If any solicitor fails to comply with such rules, any person may make a complaint of that failure to the Solicitors Disciplinary Tribunal⁴.

As from a day to be appointed rules made by the Authority may:

- 1067 (1) make provision generally or subject to exceptions or only in relation to specified cases⁵;
- 1068 (2) make different provision for different cases or circumstances or for different purposes⁶.

1 The Solicitors Act 1974 s 31(1), (1A) refer to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)): see s 31(1), (1A) (s 31(1) amended by the Legal Services Act 2007 Sch 16 paras 1, 31(1), (2)(a), (d)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

2 Until a day to be appointed such rules must be made with the concurrence of the Master of the Rolls: see the Solicitors Act 1974 s 31(1) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 31(1), (2)(b), Sch 23). However, where under the Courts and Legal Services Act 1990 Sch 4 (approval of certain rules in connection with the grant of rights of audience or rights to conduct litigation) (see PARA 329 et seq) the Secretary of State approves any rule (whether or not the rule required to be approved under Sch 4) such as is mentioned in the Solicitors Act 1974 s 31(1), the requirement of the concurrence of the Master of the Rolls does not apply: see the Solicitors Act 1974 s 31(3), (4) (both added by the Courts and Legal Services Act 1990 Sch 17 para 10 and prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 31(1), (4), Sch 23). At the date at which this volume states the law no such day had been appointed.

As from a day to be appointed the powers conferred by the Solicitors Act 1974 s 31(1) include power to make, in relation to solicitors, provision of a kind which the Authority would be prohibited from making but for the Legal Services Act 2007 s 157(5)(c) (not yet in force) (see PARA 386): Solicitors Act 1974 s 31(1A) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 31(1), (3)). At the date at which this volume states the law no such day had been appointed.

3 Solicitors Act 1974 s 31(1) (amended by the Access to Justice Act 1999 Sch 7 para 1). As from a day to be appointed the Solicitors Act 1974 s 31(1) is amended to enable rules to be made regarding fitness to practise and to empower the Authority to take such action as may be appropriate to enable them to ascertain whether or not the provisions of rules made, or of any code or guidance issued by them are being, or have been, complied with: s 31(1) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 31(1), (2)(c), (e)). At the date at which this volume states the law no such day had been appointed. The Authority has a power to waive in writing the Solicitors' Code of Conduct 2007 but not in relation to r 1 (see PARA 831), rr 3.01-3.05 (see PARAS 802, 818), r 4 (see PARA 740), r 6 (see PARA 833), r 15.01 (see PARA 830), r 15.03 (see PARAS 802, 818), r 15.04 (see PARAS 740, 799), r 15.18, rr 15.22-15.24, r 18, rr 22-24: see r 22.01. Rule 22 also applies to an overseas practice: see r 15.22.

4 Solicitors Act 1974 s 31(2). As to the Solicitors Disciplinary Tribunal see PARA 629 et seq.

5 Solicitors Act 1974 s 86A(1) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 74). At the date at which this volume states the law no such day had been appointed. Without prejudice to the generality of the Solicitors Act 1974 s 86A(1), any rules prescribing a fee may provide for that fee to be reduced or waived in such circumstances as may be specified in the rules: s 86A(2) (as so prospectively added).

6 Solicitors Act 1974 s 86A(2).

UPDATE

826-829 In general

Solicitors' Code of Conduct 2007 rr 15, 16, 22, 23, 25 amended on 31 March 2009.

828 Power to make Code of Conduct and rules

NOTE 2--Solicitors Act 1974 s 31(1A), and repeal of s 31(3), (4), in force 1 January 2010: SI 2009/3250.

NOTES 3, 5--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(i) In general/829. Code of Conduct and rules in force.

829. Code of Conduct and rules in force.

The following provisions are currently in force¹:

- 1069 (1) the Solicitors' Code of Conduct 2007²;
- 1070 (2) the Solicitors' Accounts Rules 1998³;
- 1071 (3) the Solicitors' Indemnity (Enactment) Rules 2007⁴;
- 1072 (4) the Solicitors' Indemnity Insurance Rules 2008⁵;
- 1073 (5) the Solicitors' Financial Services (Scope) Rules 2001⁶;
- 1074 (6) the Solicitors' Financial Services (Conduct of Business) Rules 2001⁷;
- 1075 (7) the Solicitors' Compensation Fund Rules 1995⁸;
- 1076 (8) the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991⁹;
- 1077 (9) the Solicitors' Recognised Bodies Regulations 2007¹⁰.

1 The following rules were repealed by the Solicitors' Code of Conduct 2007:

- 155 (1) the Solicitors' Practice Rules 1990 (Solicitors' Code of Conduct 2007 r 25.01(2)(a));
- 156 (2) the Solicitors' Publicity Code 2001 (Solicitors' Code of Conduct 2007 r 25.01(2)(b));
- 157 (3) the Solicitors' Introduction and Referral Code 1990 (Solicitors' Code of Conduct 2007 r 25.01(2)(c));
- 158 (4) the Employed Solicitors Code 1990 (Solicitors' Code of Conduct 2007 r 25.01(2)(d));
- 159 (5) the Solicitors' Separate Business Code 1994 (Solicitors' Code of Conduct 2007 r 25.01(2)(e));
- 160 (6) the Solicitors' Costs Information and Client Care Code 1999 (Solicitors' Code of Conduct 2007 r 25.01(2)(f));
- 161 (7) the Law Society's Code for Advocacy (Solicitors' Code of Conduct 2007 r 25.01(2)(g));
- 162 (8) the Solicitors' Anti-Discrimination Rules 2004 (Solicitors' Code of Conduct 2007 r 25.01(2)(h));
- 163 (9) the Solicitors' Overseas Practice Rules 1990 (Solicitors' Code of Conduct 2007 r 25.01(2)(i)); and
- 164 (10) the Solicitors' Incorporated Practice Rules 2004 (Solicitors' Code of Conduct 2007 r 25.01(2)(j)).

The Solicitors' Code of Conduct 2007 also replaces the conduct of obligations imposed by virtue of the Guide to Professional Conduct of Solicitors (1999): see Solicitors' Code of Conduct 2007 r 25.01(3).

2 See the Solicitors' Code of Conduct 2007 r 25.01(1). As to the Solicitors' Code of Conduct 2007 see PARA 830 et seq. The Solicitors' Code of Conduct 2007 applies to:

- 165 (1) a solicitor, in relation to practice as a solicitor from offices in England and Wales and outside England and Wales (r 23.01(a));

- 166 (2) a registered European lawyer, in relation to practice as a lawyer of an Establishment Directive state from offices in England and Wales, Northern Ireland and Scotland (r 23.01(b));
- 167 (3) a recognised body incorporated in England and Wales, in relation to practice from offices in England and Wales and outside England and Wales (r 23.01(c));
- 168 (4) a recognised body incorporated in an Establishment Directive state but outside England and Wales under certain circumstances (see r 23.01(d));
- 169 (5) a registered foreign lawyer in relation to practice as a foreign lawyer from offices in England and Wales under certain circumstances (see r 23.01(e)); and
- 170 (6) a solicitor who was formerly a registered European lawyer in relation to practice as a lawyer of an Establishment Directive state from offices in the UK (r 23.01(f)).

As to the meaning of 'Establishment Directive state' see PARA 874 note 2. Certain rules also apply in relation to other forms of practice and outside practice and certain rules apply to an overseas practice: see rr 15.23, 23.02, 23.03.

3 See the Solicitors' Code of Conduct 2007 r 25.01(4)(a). As to the Solicitors' Accounts Rules 1998 see PARA 835 et seq.

4 See the Solicitors' Code of Conduct 2007 r 25.01(4)(b). As to the Solicitors' Indemnity (Enactment) Rules 2007 see PARA 854.

5 See the Solicitors' Code of Conduct 2007 r 25.01(4)(c). As to the Solicitors' Indemnity Insurance Rules 2008 see PARA 854.

6 See the Solicitors' Code of Conduct 2007 r 25.01(4)(d). As to the Solicitors' Financial Services (Scope) Rules 2001 see PARA 856 et seq.

7 See the Solicitors' Code of Conduct 2007 r 25.01(4)(e). As to the Solicitors' Financial Services (Conduct of Business) Rules 2001 see PARAS 856, 860.

8 See the Solicitors' Code of Conduct 2007 r 25.01(4)(f). As to the Solicitors' Compensation Fund Rules 1995 see PARA 862 et seq.

9 See the Solicitors' Code of Conduct 2007 r 25.01(4)(g). As to the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991 see PARA 867.

10 See the Solicitors' Code of Conduct 2007 r 25.01(1).

UPDATE

826-829 In general

Solicitors' Code of Conduct 2007 rr 15, 16, 22, 23, 25 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(ii) Code of Conduct/830. Generally.

(ii) Code of Conduct

830. Generally.

The Solicitors' Code of Conduct 2007 came into force on 1 July 2007¹. The Code sets out several rules covering the following:

- 1078 (1) core duties²;
- 1079 (2) client relations³;
- 1080 (3) conflict of interest⁴;
- 1081 (4) confidentiality and disclosure⁵;
- 1082 (5) business management in England and Wales⁶;
- 1083 (6) equality and diversity⁷;
- 1084 (7) publicity⁸;
- 1085 (8) fee sharing⁹;
- 1086 (9) referrals of business¹⁰;
- 1087 (10) relations with third parties¹¹;
- 1088 (11) litigation and advocacy¹²;
- 1089 (12) framework of practice¹³;
- 1090 (13) in-house practice¹⁴;
- 1091 (14) incorporated practice¹⁵;
- 1092 (15) overseas practice¹⁶;
- 1093 (16) European cross-border practice¹⁷;
- 1094 (17) insolvency practice¹⁸;
- 1095 (18) property selling¹⁹;
- 1096 (19) financial services²⁰;
- 1097 (20) requirements of practice²¹; and
- 1098 (21) separate business²².

1 See the Solicitors' Code of Conduct 2007 introduction. There is guidance printed with the Code but the guidance is not mandatory and is not generally covered in this work.

2 See the Solicitors' Code of Conduct 2007 r 1; and PARA 831.

3 See the Solicitors' Code of Conduct 2007 r 2.

4 See the Solicitors' Code of Conduct 2007 r 3; and PARAS 802, 818.

5 See the Solicitors' Code of Conduct 2007 r 4; and PARAS 740, 799.

6 See the Solicitors' Code of Conduct 2007 r 5; and PARA 681.

7 See the Solicitors' Code of Conduct 2007 r 6; and PARA 833.

8 See the Solicitors' Code of Conduct 2007 r 7; and PARA 834.

9 See the Solicitors' Code of Conduct 2007 r 8; and PARAS 682-683.

10 See the Solicitors' Code of Conduct 2007 r 9; and PARAS 684-685, 831, 955.

11 See the Solicitors' Code of Conduct 2007 r 10; and PARAS 749, 831, 871-873.

- 12 See the Solicitors' Code of Conduct 2007 r 11; and PARAS 746, 831.
- 13 See the Solicitors' Code of Conduct 2007 r 12; and PARAS 676-680.
- 14 See the Solicitors' Code of Conduct 2007 r 13; and PARA 686.
- 15 See the Solicitors' Code of Conduct 2007 r 14; and PARA 689.
- 16 See the Solicitors' Code of Conduct 2007 r 15.
- 17 See the Solicitors' Code of Conduct 2007 r 16; and PARA 826.
- 18 See the Solicitors' Code of Conduct 2007 r 17; and PARA 831.
- 19 See the Solicitors' Code of Conduct 2007 r 18; and PARA 818; and **HOUSING**.
- 20 See the Solicitors' Code of Conduct 2007 r 19; and PARA 861.
- 21 See the Solicitors' Code of Conduct 2007 r 20.
- 22 See the Solicitors' Code of Conduct 2007 r 21; and PARAS 720-723.

UPDATE

830-834 Code of conduct

Solicitors' Code of Conduct 2007 rr 1-8, 10, 12-18, 21 amended on 31 March 2009, r 2 further amended on 11 August 2009, 31 March 2010, r 11 amended on 24 August 2009, r 20 amended on 1 July 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(ii) Code of Conduct/831. Core duties.

831. Core duties.

The Solicitors' Code of Conduct 2007¹ provides solicitors with a number of core duties². The core duties are:

- 1099 (1) to uphold the rule of law and the proper administration of justice³;
- 1100 (2) to act with integrity⁴;
- 1101 (3) not to allow the independence of the solicitor to be compromised⁵;
- 1102 (4) to act in the best interests of each client⁶;
- 1103 (5) to provide a good standard of client service⁷; and
- 1104 (6) not to behave in a way likely to diminish public trust in the solicitor or the profession⁸.

The Code also provides that a solicitor must not use his position to take unfair advantage of anyone for his benefit or for the benefit of another⁹. Nor must a solicitor deceive or knowingly or recklessly mislead a court¹⁰.

A solicitor acting as an insolvency practitioner must also comply with the relevant guidelines relating to insolvency¹¹.

1 The Solicitors' Code of Conduct 2007 came into force on 1 July 2007 and was amended on 24 July 2007, 1 August 2007, 9 January 2008, 4 March 2008.

2 See the Solicitors' Code of Conduct 2007 rr 1.01-1.06. These rules also apply to the overseas practice of a solicitor, and to the practice of a solicitor or a recognised body from an office outside England and Wales, and to the practice of a registered European lawyer from an office in Scotland or Northern Ireland with some exceptions: see r 15.01.

3 Solicitors' Code of Conduct 2007 r 1.01.

4 Solicitors' Code of Conduct 2007 r 1.02.

5 Solicitors' Code of Conduct 2007 r 1.03. A solicitor has a duty to preserve independency when acting in connection with the provisions of financial services for clients: see the Solicitors' Code of Conduct 2007 r 19; and PARA 861. When making or receiving referrals a solicitor is under a duty to ensure that he does nothing which would compromise his independence or ability to act and advise in the best interests of his clients: see r 9.01(1).

6 Solicitors' Code of Conduct 2007 r 1.04.

7 Solicitors' Code of Conduct 2007 r 1.05.

8 Solicitors' Code of Conduct 2007 r 1.06.

9 See the Solicitors' Code of Conduct 2007 r 10.01; and PARA 871. As to relations with third parties generally see r 10; and PARA 871 et seq.

10 See the Solicitors' Code of Conduct 2007 r 11.01; and PARA 746. For this purpose 'court' means any court, tribunal or inquiry of England and Wales, or a British court martial, or any court of another jurisdiction: r 24.01.

11 See the Solicitors' Code of Conduct 2007 r 17. However this does not apply to an overseas practice except in relation to appointments appertaining to orders made in the courts of England and Wales: r 15.17.

UPDATE

830-834 Code of conduct

Solicitors' Code of Conduct 2007 rr 1-8, 10, 12-18, 21 amended on 31 March 2009, r 2 further amended on 11 August 2009, 31 March 2010, r 11 amended on 24 August 2009, r 20 amended on 1 July 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(ii) Code of Conduct/832. Business arrangements.

832. Business arrangements.

A solicitor may practise as a sole principal, in a partnership¹, as a director, member or shareowner² of a company which is a recognised body³, as a member of a limited liability partnership⁴, or in employment in an in-house practice or private practice⁵. Where a solicitor has a separate business⁶ which is not regulated by the Solicitors Regulation Authority only certain services may be provided by that separate business⁷.

A principal in a firm or a director or member of a recognised body must make arrangements for the effective management of the firm paying particular attention to certain supervision and management responsibilities set out in the Solicitors' Code of Conduct 2007⁸.

A solicitor practising from an office as an employee of a business which is not the practice of a solicitor may act on behalf of others or provide advice under the circumstances provided by the Solicitors' Code of Conduct 2007⁹.

Generally a solicitor must not share his fees with a non-lawyer unless he is an employee¹⁰. If a solicitor makes or receives referrals to or from third parties he is under a duty to ensure he maintains his independence and acts in the best interests of his client without restricting his freedom to recommend alternatives¹¹. Contingency fees are generally prohibited by the Solicitors' Code of Conduct 2007¹².

1 However this must not be partnership with a separate legal identity if the partnership has an office in England or Wales: see the Solicitors' Code of Conduct r 12.01(2)(a); and PARA 676.

2 However this must not be as a director, member or owner of a body corporate with an office in England and Wales which is not a recognised body, unless as an in-house solicitor: see the Solicitors' Code of Conduct r 12.01(2)(b); and PARA 676.

3 As to the meaning of 'recognised body' see PARA 687 note 3.

4 I.e. one incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq).

5 See the Solicitors' Code of Conduct 2007 r 12.01; and PARAS 676-677. The Code also provides the manner in which registered European lawyers, registered foreign lawyers and recognised bodies may practise: see r 12.02-12.04; and PARAS 678-680. As to the meaning of 'registered European lawyers' see PARA 542 note 2.

6 As to the meaning of 'separate business' see PARA 720.

7 See the Solicitors' Code of Conduct 2007 r 21; and PARAS 720-723.

8 See the Solicitors' Code of Conduct 2007 r 5; and PARA 681.

9 See the Solicitors' Code of Conduct 2007 r 13; and PARA 686.

10 See the Solicitors' Code of Conduct 2007 r 8; and PARAS 682-683.

11 See the Solicitors' Code of Conduct 2007 r 8; and PARA 684 et seq.

12 See the Solicitors' Code of Conduct 2007 rr 2.04, 9.01(4); and PARA 955. As to exceptions see r 9.01(5).

UPDATE

830-834 Code of conduct

Solicitors' Code of Conduct 2007 rr 1-8, 10, 12-18, 21 amended on 31 March 2009, r 2 further amended on 11 August 2009, 31 March 2010, r 11 amended on 24 August 2009, r 20 amended on 1 July 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(ii) Code of Conduct/833. Equality and diversity.

833. Equality and diversity.

A solicitor is under a duty in his professional dealings not to discriminate and to take steps and make adjustments to prevent discrimination by his employees, partners, members, directors or clients¹. A principal in a firm or a member or director of a recognised body must adopt and implement an appropriate policy for preventing discrimination and harassment and promoting equality and diversity within his firm and to ensure compliance by all employees, partners, members and directors².

1 See the Solicitors' Code of Conduct 2007 r 6.01. A decision by a court or tribunal that the solicitor has committed or is to be treated as having committed an unlawful act of discrimination is treated as evidence of a breach of this rule: r 6.02. Rule 6 does not apply to an overseas practice: r 15.06.

2 See the Solicitors' Code of Conduct 2007 r 6.03. A similar duty applies to a person with management responsibilities in an in-house practice: see r 6.04. The Solicitors Regulation Authority has no power to waive any of the provisions of r 6: r 6.05.

UPDATE

830-834 Code of conduct

Solicitors' Code of Conduct 2007 rr 1-8, 10, 12-18, 21 amended on 31 March 2009, r 2 further amended on 11 August 2009, 31 March 2010, r 11 amended on 24 August 2009, r 20 amended on 1 July 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(ii) Code of Conduct/834. Publicity.

834. Publicity.

A solicitor is generally free to publicise his practice as a solicitor but such publicity may not be made using unsolicited visits or telephone calls to a member of the public¹. Any publicity must not be misleading or inaccurate² and where it relates to charges this must be clearly expressed³. Such provisions apply to all forms of publicity⁴.

1 See the Solicitors' Code of Conduct 2007 r 7.03(1). For this purpose 'member of the public' does not include a current or former client, another lawyer, an existing or potential professional or business connection or a commercial organisation or public body: r 7.03(2). Rule 7 applies to any publicity a solicitor or his firm conducts or authorises in relation to the practice, any other business or activity carried on by the solicitor or his firm or any other business or activity carried on by others: see r 7.06(1). A person must not be authorised to conduct publicity for a practice which would be contrary to r 7: see r 7.05.

2 See the Solicitors' Code of Conduct 2007 r 7.01.

3 See the Solicitors' Code of Conduct 2007 r 7.02. In relation to a practice in England and Wales, it must also be made clear whether or not disbursements and VAT are included: r 7.02. Publicity intended for a jurisdiction outside England and Wales must comply with r 7 and the rules in force in that jurisdiction: see r 7.04. Rule 7 generally applies to an overseas practice with some exceptions: see r 15.07.

4 See the Solicitors' Code of Conduct 2007 r 7.06(2). This includes the name or description of the firm, stationery, advertisements, brochures, websites, directory entries, media appearances, promotional press releases, and direct approaches to potential clients and other persons, and whether conducted in person, in writing or in electronic form: see r 7.06(2). The letterhead of a firm must bear the words 'regulated by the Solicitors Regulation Authority': r 7.07(1). The names of certain persons must also be present on the letterhead: see r 7.07(2), (3). 'Letterhead' includes a fax: r 7.07(5).

UPDATE

830-834 Code of conduct

Solicitors' Code of Conduct 2007 rr 1-8, 10, 12-18, 21 amended on 31 March 2009, r 2 further amended on 11 August 2009, 31 March 2010, r 11 amended on 24 August 2009, r 20 amended on 1 July 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/A. GENERALLY/835. The power to make rules.

(iii) Client Money

A. GENERALLY

835. The power to make rules.

The Solicitors Regulation Authority¹ must make rules²:

- 1105 (1) as to the opening and keeping by solicitors³ of accounts at banks⁴ or with building societies⁵ for clients' money⁶ and as to the keeping by solicitors of accounts containing particulars and information as to money received or held or paid by them for or on account of their clients⁷; and
- 1106 (2) until a day to be appointed, as to the opening and keeping by solicitors of accounts at banks or with building societies for money comprised in controlled trusts⁸ and the keeping by solicitors of accounts containing particulars and information as to money received or held or paid by them for or on account of any such trust⁹; and
- 1107 (3) as from a day to be appointed, as to the operation by solicitors of accounts kept by their clients or other persons at banks or with building societies or other financial institutions¹⁰.

1 The Solicitors Act 1974 s 32 refers to the 'Council' (ie the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1)) but s 32(1), (4) are prospectively amended to refer to the 'Society' (ie the Law Society (see s 87(1); and PARA 602 note 4)): see s 32 (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(a), (5)(a))). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619). 'Charter' means the Royal Charter dated 26 February 1845, whereby the Society was incorporated, together with the Royal Charters supplemental to it dated respectively 26 November 1872, 4 June 1903, 2 June 1909 and 10 March 1954: Solicitors Act 1974 s 87(1).

2 Until a day to be appointed such rules must be made with the concurrence of the Master of the Rolls: see the Solicitors Act 1974 s 32(1) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(b), Sch 23). At the date at which this volume states the law no such day had been appointed. Rules under the Solicitors Act 1974 s 32(5) may specify circumstances in which solicitors or any class of solicitors are exempt from the rules by virtue of their office: s 32(5). As from a day to be appointed the words 'or a part of the rules' are substituted for the words 'by virtue of their office or employment' by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (5)(c). At the date at which this volume states the law no such day had been appointed. Rules made under the Solicitors Act 1974 must also provide for interest to be paid on clients' money: see s 33; and PARA 842. As to the relevant rules see the Solicitors Accounts Rules 1998; and PARA 836. As from a day to be appointed when rules made under s 32 contain any such provision as is referred to in s 33(1) and have effect in relation to employees of solicitors by virtue of s 34A(1) (see PARA 622) the following applies: s 34B(2) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 36). Except as provided by the rules, an employee to whom the rules are applied is not liable to account to any client, other person or trust for interest received by the employee on money held at a bank or building society in an account which is for money received or held for, or on account of clients of the solicitor, other persons or trusts, generally or that client person or trust separately: Solicitors Act 1974 s 34B(3) (as so prospectively added).

3 As to the meaning of 'solicitor' see PARA 600 note 1.

4 'Bank' means the Bank of England, a person (other than a building society) who has permission under the Financial Services and Markets Act 2000 Pt 4 (ie ss 40-55) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 348) to accept deposits or an EEA firm of the kind mentioned in Sch 3 para 5(b) (see **FINANCIAL**

SERVICES AND INSTITUTIONS vol 48 (2008) PARA 315) which has permission under Sch 3 para 15 (as a result of qualifying for authorisation under Sch 3 para 12) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315) to accept deposits: Solicitors Act 1974 s 87(1) (definition substituted by SI 2001/3649).

5 As to the meaning of 'building society' see the Building Societies Act 1986; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856 (definition applied by the Solicitors Act 1974 s 87(1) (application of definition added by the Building Societies Act 1986 Sch 18 para 11(5); and amended by the Access to Justice Act 1999 Sch 7 para 4, Sch 15 Pt II).

6 Solicitors Act 1974 s 32(1)(a) (amended by the Building Societies Act 1986 Sch 18 para 11(1), (2)). For the purposes of the Solicitors Act 1974 ss 32, 33 references to clients' money and money of a kind mentioned in s 32(1)(b) or s 33(1)(a) (see PARA 842) include references to money held by a solicitor as a stakeholder (whether or not paid by a client of his): s 32(6) (added by the Courts and Legal Services Act 1990 Sch 18 para 13). As from a day to be appointed, the Solicitors Act 1974 s 32(1)(a) is substituted and s 32(1A) is added by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(c), (3) and instead of applying to clients' money applies to money (including money held on trust) which is received, held or dealt with for clients or other persons: see the Solicitors Act 1974 s 32(1), (1A) (as so prospectively substituted and added). 'Client' includes:

171 (1) in relation to contentious business, any person who as a principal or on behalf of another person retains or employs, or is about to retain or employ, a solicitor, and any person who is or may be liable to pay a solicitor's costs (s 87(1));

172 (2) in relation to non-contentious business, any person who, as a principal or on behalf of another, or as a trustee or executor, or in any other capacity, has power, express or implied, to retain or employ, and retains or employs or is about to retain or employ, a solicitor, and any person for the time being liable to pay to a solicitor for his services any costs (s 87(1)).

'Contentious business' means business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court or before an arbitrator, not being business which falls within the definition of non-contentious or common form probate business contained in the Supreme Court Act 1981 s 128 (see **EXECUTORS AND ADMINISTRATORS** vol 17(2) (Reissue) PARA 74): Solicitors Act 1974 s 87(1) (amended by the Arbitration Act 1996 Sch 4, the Administration of Justice Act 1985 Sch 1 para 12(a); and prospectively amended by the Constitutional Reform Act 2005 Sch 11 para 21(1), (6) to refer to the Senior Courts Act 1981 instead of the Supreme Court Act 1981). 'Non-contentious business' means any business done as a solicitor which is not contentious business: Solicitors Act 1974 s 87(1). 'Costs' includes fees, charges, disbursements, expenses and remuneration: s 87(1).

7 Solicitors Act 1974 s 32(1)(b). As from a day to be appointed s 32(1)(b) is substituted by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(c) and as from that date will apply to the keeping by solicitors of accounts containing information as to money received, held or paid by them for or on account of their clients or other persons (including money received, held or paid under a trust): Solicitors Act 1974 s 32(1)(b) (as so prospectively substituted). The rules must empower the Authority to take such action as may be necessary to enable it to ascertain whether or not the rules are being complied with (Solicitors Act 1974 s 32(1)(c)), and, until a day to be appointed, may specify the location of the branches at which the accounts are to be kept (s 32(1) (amended by the Building Societies Act 1986 Sch 19 Pt II; and relevant wording prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(e), Sch 23)). As from a day to be appointed the Solicitors Act 1974 s 32(1)(c) is amended by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(d)(iii) to include where the rules are being or have been complied with. As to the prospective amendments see also note 1. At the date at which this volume states the law no such day had been appointed.

8 Until a day to be appointed 'controlled trust', in relation to a solicitor, means a trust of which he is a sole trustee or co-trustee only with one or more of his partners or employees: Solicitors Act 1974 s 87(1) (definition prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 75(c), Sch 23). At the date at which this volume states the law no such days had been appointed.

9 Solicitors Act 1974 s 32(2)(a), (b) (amended by the Building Societies Act 1986 Sch 18 para 11(1), (2); and prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (4), Sch 23). The rules must empower the Authority to take such action as may be necessary to enable it to ascertain whether or not the rules are being complied with (Solicitors Act 1974 s 32(2)(c) (as so prospectively repealed)), and may specify the location of the branches at which the accounts are to be kept (s 32(2) (amended by the Building Societies Act 1986 Sch 19 Pt II; and so prospectively repealed)).

10 Solicitors Act 1984 s 32(1)(aa) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(c)). At the date at which this volume states the law no such day had been appointed.

UPDATE

835 The power to make rules

NOTE 1--Amendments and repeals in force 31 March 2009: SI 2009/503.

NOTE 2--Day appointed in relation to Legal Services Act 2007 Sch 16 para 32(2)(b) is 1 January 2010 (SI 2009/3250) and in relation to Legal Services Act 2007 Sch 16 para 32(5)(c) is 31 March 2009 (SI 2009/503).

NOTES 6, 10--Legal Services Act 2007 Sch 16 para 32(1), (2)(c), (3) and repeal of Solicitors Act 1974 s 32(6) in force 31 March 2009: SI 2009/503.

NOTE 6--Constitutional Reform Act 2005 Sch 11 para 21 in force 1 October 2009: SI 2009/1604.

NOTE 9--Repeals in force 31 March 2009: SI 2009/503.

NOTE 10--Reference to Solicitors Act 1984 should be to Solicitors Act 1974.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/A. GENERALLY/836. Rules relating to accounts.

836. Rules relating to accounts.

The main rules currently in force relating to solicitors' accounts are the Solicitors' Accounts Rules 1998¹. These rules regulate the accounts of solicitors², registered European lawyers³, registered foreign lawyers⁴ and recognised bodies⁵ in respect of their English and Welsh practices⁶. Provision is made by the Solicitors' Code of Conduct 2007 in relation to the practice of a solicitor or a recognised body from an office outside England and Wales⁷.

1 The Solicitors' Accounts Rules 1998 were made on 22 July 1998 and amended on 15 January 2008 and 14 July 2008. They were originally made by the Council of the Law Society but in practice are now governed by the Solicitors Regulation Authority: see PARA 619. They replaced the Solicitors' Accounts Rules 1991, the Solicitors' Accounts (Legal Aid Temporary Provision) Rules 1992 and the Accountant's Report Rules 1991 but implementation was not required until 1 May 2000 with the Solicitors' Accounts Rules 1991 continuing to operate until full implementation and applying in certain circumstances: see the Solicitors' Accounts Rules 1998 r 50. The Solicitors' Accounts Rules 1998 contain notes which expand on the rules and are not set out in this work.

2 The Solicitors' Accounts Rules 1998 apply to solicitors of the Supreme Court whether they are sole practitioners, partners (or held out as partners), assistants, associates, consultants or locums in private practice, employed as in-house solicitors (ie in a law centre or in commerce and industry), or directors or members of recognised bodies: see r 4(1)(a). 'Solicitor' means an individual who is a solicitor of the Supreme Court; and for the purposes of the Solicitors' Accounts Rules 1998 also includes a registered European lawyer; a registered foreign lawyer practising in partnership with a solicitor of the Supreme Court or registered European lawyer or as the director of a recognised body which is a company or as a member of a recognised body which is a limited liability partnership; a recognised body; and a partnership including at least one solicitor of the Supreme Court, registered European lawyer or recognised body: r 2(2)(x), (xa). However the rules do not apply where a solicitor is practising as an employee of: (1) a local authority; (2) a statutory undertaker; (3) a body whose accounts are audited by the Comptroller or Auditor General; (4) the Duchy of Lancaster; (5) the Duchy of Cornwall; or (6) the Church Commissioners or a solicitor who practises as the Solicitor of the City of London or a solicitor carrying out the functions of a coroner or other judicial officer or a sheriff or under-sheriff: see r 5.

A solicitor acting as a liquidator, a trustee in bankruptcy, a Court of Protection deputy or a trustee of an occupational pension scheme must comply with the appropriate statutory rules or regulations and rr 1, 9: see r 9.

3 The Solicitors' Accounts Rules 1998 apply to registered European lawyers whether they are sole practitioners, partners in a practice (or held out as partners), assistants, associates, consultants or locums in a private practice, employed as in-house lawyers (ie in a law centre or in commerce and industry), directors of recognised bodies which are companies or members of recognised bodies which are limited liability partnerships: see r 4(1)(aa). As to the meaning of 'registered European lawyer' see PARA 542 note 2. As to the register see PARA 628.

4 The Solicitors' Accounts Rules 1998 apply to registered foreign lawyers whether they are practising in partnership (or held out as partners) with solicitors of the Supreme Court or registered European lawyers, or directors or members of recognised bodies: see r 4(1)(b). As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

5 As to the meaning of 'recognised body' see PARA 687 note 3.

6 See the Solicitors' Accounts Rules 1998. The rules only apply to practice carried on from an office in England and Wales: r 3. All the principals in a practice are responsible for ensuring compliance with the rules by themselves and everyone else working in the practice: r 6. 'Principal' means a sole practitioner, a partner or a person held out as a partner (including a 'salaried' or 'associate' partner), the principal solicitor (or any one of the principal solicitors) in an in-house practice (for example, in a law centre or in commerce and industry): r 2(2)(r). However the duty to ensure compliance with the rules also extends to directors of a recognised body which is a company or to the members of a recognised body which is a company or to the members of a

recognised body which is a limited liability partnership and to the recognised body itself: r 6. The duty to remedy any breaches of the rules rests with the person causing the breach and all the principals and extends to replacing missing client money or controlled trust money from the principals' own resources, even if the money has been misappropriated by an employee or fellow principal and whether or not a claim is subsequently made on the Solicitors' Indemnity or Compensation Funds or on the firm's insurance: see r 7. The rights or recourse of a solicitor by way of lien, set off, counterclaim, charge or otherwise against money standing to the credit of a client account are not affected by the Solicitors' Accounts Rules 1998: r 12.

7 See the Solicitors' Code of Conduct 2007 r 15.27.

UPDATE

836 Rules relating to accounts

TEXT AND NOTES--Solicitors' Accounts Rules 1998 rr 2-7, 50 amended on 31 March 2009.

NOTE 7--Solicitors' Code of Conduct 2007 r 15.27 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/A. GENERALLY/837. General principles.

837. General principles.

The Solicitors' Accounts Rules 1998 provide a solicitor with a list of general principles that he must observe¹. Those principles are:

- 1108 (1) to comply with requirements in the Solicitors' Code of Conduct 2007 regarding integrity², acting in the client's best interests³ and public trust⁴;
- 1109 (2) to keep other people's money separate from money belonging to the solicitor of the practice⁵;
- 1110 (3) to keep other people's money safely in a bank or building society account⁶ identifiable as a client account⁷ (except when the rules specifically provide otherwise)⁸;
- 1111 (4) to use each client's money for that client's matters only⁹;
- 1112 (5) to use controlled trust money¹⁰ for the purposes of that trust only¹¹;
- 1113 (6) to establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules¹²;
- 1114 (7) to keep proper accounting records to show accurately the position with regard to the money held for each client and each controlled trust¹³;
- 1115 (8) to account for interest on other people's money in accordance with the rules¹⁴;
- 1116 (9) to co-operate with the Solicitors Regulation Authority¹⁵ in checking compliance with the rules¹⁶; and
- 1117 (10) to deliver annual accountants' reports as required by the rules¹⁷.

1 As to the meaning of 'solicitor' see PARA 600 note 1.

2 See the Solicitors' Code of Conduct 2007 r 1.02; and PARA 831.

3 See the Solicitors' Code of Conduct 2007 r 1.04; and PARA 831. 'Client' means the person for whom a solicitor acts: Solicitors' Accounts Rules 1998 r 2(2)(e).

4 Solicitors' Accounts Rules 1998 r 1(a). As to the requirements in the Code relating to public trust see the Solicitors' Code of Conduct 2007 r 1.06; and PARA 831.

5 Solicitors' Accounts Rules 1998 r 1(b). See also r 15; and PARA 838.

6 As to the meaning of 'bank' see the Solicitors Act 1974 s 87(1); and PARA 835 note 4 (definition applied by the Solicitors' Accounts Rules 1998 r 2(1)(c)). As to the meaning of 'building society' see the Building Societies Act 1986; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856 (definition applied by the Solicitors' Accounts Rules 1998 r 2(2)(d)).

7 As to the meaning of 'client account' see PARA 838 note 3 (definition applied by the Solicitors' Accounts Rules 1998 r 2(2)(f)).

8 Solicitors' Accounts Rules 1998 r 1(c). See also rr 14, 15; and PARA 838.

9 Solicitors' Accounts Rules 1998 r 1(d).

10 'Controlled trust money' is money held or received for a controlled trust: Solicitors' Accounts Rules 1998 r 13 (definition applied by r 2(2)(i)). A 'controlled trust' arises when:

173 (1) a solicitor of the Supreme Court or registered European lawyer is the sole trustee of a trust, or co-trustee only with one or more of his or her partners or employees (r 2(2)(h)(i));

174 (2) a registered foreign lawyer who practises in partnership with a solicitor of the Supreme Court or registered European lawyer is, by virtue of being a partner in that partnership, the sole trustee of a trust, or co-trustee only with one or more of the other partners or employees of that partnership (r 2(2)(h)(ii));

175 (3) a recognised body which is a company is the sole trustee of a trust, or co-trustee only with one or more of the recognised body's officers or employees (r 2(2)(h)(iii)); or

176 (4) a recognised body which is a limited liability partnership is the sole trustee of a trust, or co-trustee only with one or more of the recognised body's members or employees (r 2(2)(h)(iv));

and 'controlled trustee' means a trustee of a controlled trust: r 2(2)(h). A solicitor who in the course of practice acts as a controlled trustee must treat the controlled trust money as if it were client money except where the rules provide otherwise: r 8.

'Trustee' includes a personal representative (ie an executor or an administrator) and 'trust' includes the duties of a personal representative: r 2(2)(y).

11 Solicitors' Accounts Rules 1998 r 1(e).

12 Solicitors' Accounts Rules 1998 r 1(f). As to such accounting systems see rr 29-33; and PARA 844.

13 Solicitors' Accounts Rules 1998 r 1(g).

14 Solicitors' Accounts Rules 1998 r 1(h). See also rr 24-28; and PARA 843.

15 The Solicitors' Accounts Rules 1998 refer to the 'Society' (ie the Law Society of England and Wales (see the Solicitors' Accounts Rules 1998 r 2(2)(w); and PARA 602 note 4). However in practice the body currently responsible for the regulation of solicitors and such rules is the Solicitors Regulation Authority (see PARA 619).

16 Solicitors' Accounts Rules 1998 r 1(i). As to the duty to produce documents and reports see r 34; and PARA 846.

17 Solicitors' Accounts Rules 1998 r 1(j). As to accountants' reports see rr 35-49; and PARAS 847, 850, 852.

UPDATE

837 Rules relating to accounts

TEXT AND NOTES--Solicitors' Accounts Rules 1998 rr 1, 2, 8, 13-15, 34-43, 45-47, 49 amended on 31 March 2009.

NOTE 4--Solicitors' Code of Conduct 2007 r 1.06 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/B. HANDLING CLIENT MONEY/838.

Client accounts and client money.

B. HANDLING CLIENT MONEY

838. Client accounts and client money.

A solicitor¹ holding or receiving client money or controlled trust money or both² must keep one or more client accounts³ and all client money or controlled trust money (and with limited exception only client money or controlled trust money⁴) must without delay be paid into and held in a client account⁵. However, money may be held or received by a solicitor jointly with the client, another solicitor's practice or another third party⁶. Also money held or received by solicitor liquidators, trustees in bankruptcy⁷ and Court of Protection deputies⁸ does not have to be kept in a client account⁹.

The following exceptions also apply¹⁰:

- 1118 (1) client money may be held outside a client account or paid into an account opened in the name of the client or a person designated by the client if the client instructs the solicitor to that effect¹¹;
- 1119 (2) cash received and paid, or a cheque or draft received and endorsed over, in relation to client money to the client (or a third party acting on his behalf) or, in relation to controlled trust money a beneficiary (or a third party) may under particular circumstances be withheld from a client account¹²;
- 1120 (3) certain payments in relation to unpaid professional disbursements and payments by the Legal Services Commission may be withheld from the client account¹³;
- 1121 (4) client money may be withheld from a client account on the written authorisation of the Solicitors Regulation Authority¹⁴;
- 1122 (5) controlled trust money may be paid into an account which is not a client account in accordance with the trustees' powers¹⁵.

1 As to the meaning of 'solicitor' see PARA 600 note 1.

2 All money held or received in the course of practice is 'client money' (ie money held or received for a client, and all other money which is not controlled trust money or office money), 'controlled trust money' (ie money held or received for a controlled trust) or 'office money' (ie money which belongs to the solicitor or the practice): see the Solicitors' Accounts Rules 1998 r 13.

3 Solicitors' Accounts Rules 1998 r 14(1). The only exception to this is where the solicitor always deals with client money and controlled money in accordance with the relevant exceptions: see r 14(1). A 'client account' is an account of a practice kept at a bank or building society in England and Wales for holding client money or controlled trust money or both, in accordance with the requirements of the Solicitors' Accounts Rules 1998 rr 14-23: r 14(2), (4). The account must generally be in the name of the solicitor's business and include the word 'client': see r 14(3). A client account is either a 'separate designated client account' (ie relating to a single client or single controlled trust) or a 'general client account' (ie any other client accounts): see r 14(5). For the purposes of the Solicitors Act 1974 'client account' means, until a day to be appointed, an account in the title of which the word 'client' is required by rules under s 32 and, as from a day to be appointed, an account subject to rules under s 32(1)(a): s 87(1) (prospectively amended by the Legal Services Act 2007 Sch 16 para 75(a)). At the date at which this volume states the law no such day had been appointed.

4 The solicitor's own money may be used to open or maintain the account, or as an advance to fund a payment on behalf of a client or controlled trust in excess of funds held: see the Solicitors' Accounts Rules 1998 r 15(2)(a), (b). Money may be paid into the account to replace money withdrawn in breach of r 22 (withdrawals

from a client account) (see PARA 841); see r 15(2)(c). Interest liable under a client account (see r 24; and PARA 843) may be paid into an account instead of being paid directly to the client: see r 15(2)(d). Money paid in full or part settlement of the solicitor's bill (or other notification of costs) and payments that include client money or controlled trust money as well as office money may be paid in a client account and all office money transferred out of the account within 14 days of receipt: see rr 19(1)(c), 20(2)(b), (3); and PARA 840. Where a solicitor receives regular payments from the Legal Services Commission under certain circumstances these may be transferred into a client account: see r 21(2)(c); and **LEGAL AID** vol 65 (2008) PARA 17.

5 See the Solicitors' Accounts Rules 1998 r 15(1). As soon as there is no longer any proper reason to retain client money, it must be returned to the client promptly and any client money retained at the end of a matter must be explained in writing by the solicitor to the client: see r 15(3), (4).

6 See the Solicitors' Accounts Rules 1998 r 10.

7 For the relevant provisions relating to liquidators and trustees in bankruptcy see the Insolvency Regulations 1994, SI 1994/2507; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 28.

8 For the relevant provisions relating to the Court of Protection deputies see the Court of Protection Rules 2007, SI 2007/1744; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 757 et seq.

9 See the Solicitors' Accounts Rules 1998 r 9. However if such money is received or held into a client account the rules apply: see r 9(3).

10 See the Solicitors' Accounts Rules 1998 r 15.

11 See the Solicitors' Accounts Rules 1998 rr 16, 17(c).

12 See the Solicitors' Accounts Rules 1998 rr 17(a), (b), 18(a), (b).

13 See the Solicitors' Accounts Rules 1998 rr 17(d), (e), 19(1)(b), 21(1).

14 See the Solicitors' Accounts Rules 1998 r 17(f). See also r 18(d). The rules refer to the 'Society' (ie the Law Society), however, in practice regulation of the rules is now with the Solicitors Regulation Authority (see PARA 619).

15 See the Solicitors' Accounts Rules 1998 r 18(c).

UPDATE

838 Client accounts and client money

TEXT AND NOTES--Solicitors' Accounts Rules 1998 rr 13-17, 19-21 amended, r 18 repealed on 31 March 2009.

NOTE 3--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/B. HANDLING CLIENT MONEY/839. Position in relation to banks or building societies.

839. Position in relation to banks or building societies.

Clients' money¹ held by a solicitor is, in a sense², trust money³, and when paid into a bank account the bank is debtor to the solicitor⁴ and accordingly, because of this relationship of debtor and creditor between the bank and the solicitor, the bank will be justified in refusing to meet a cheque drawn on the account before but presented after a garnishee order nisi had been served on the bank in respect of debts due to the solicitor⁵.

Where a solicitor keeps an account with a bank or a building society⁶ for clients' money⁷, the bank or building society:

1123 (1) incurs no liability, and is under no obligation to make any inquiry, and is not deemed to have any knowledge of any right of any person to any money paid or credited to the account, which it would not incur or be under or be deemed to have in the case of an account kept by a person absolutely entitled to all the money paid or credited to it⁸;

1124 (2) has no recourse or right against money standing to the credit of the account in respect of any liability of the solicitor to the bank or building society, other than a liability in connection with the account⁹.

1 As to the meaning of 'clients' money' see PARA 835 note 6.

2 See *Loescher v Dean* [1950] Ch 491 at 494, [1950] 2 All ER 124 at 126.

3 *Re A Solicitor* [1952] Ch 328, [1952] 1 All ER 133. On the solicitor's bankruptcy the client's account does not vest in the trustee in bankruptcy: *Re A Solicitor*. New trustees may be appointed under the Trustee Act 1925 s 41: see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 880.

4 *Plunkett v Barclays Bank Ltd* [1936] 2 KB 107 at 118, [1936] 1 All ER 653 at 659.

5 See *Plunkett v Barclays Bank Ltd* [1936] 2 KB 107 at 117, [1936] 1 All ER 653 at 658; **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 992.

6 As to the meanings of 'bank' and 'building society' see PARA 835 notes 4, 5.

7 Ie in pursuance of rules under the Solicitors Act 1974 s 32: see PARAS 835, 846.

8 Solicitors Act 1974 s 85(a) (amended by the Building Societies Act 1986 Sch 18 para 11(1), (4)). Cf **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 992. As from a day to be appointed where rules made under the Solicitors Act 1974 s 32(1) (see PARA 835) have effect in relation to employees of solicitors by virtue of s 34A(1) (see PARA 622), s 85 applies in relation to an employee to whom the rules have effect who keeps an account with a bank or building society in pursuance of such rules as it applies in relation to a solicitor who keeps such an account in pursuance of rules under s 32: s 34A(1) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 36). Where rules made under the Solicitors Act 1974 s 32(1) are applied to managers or employees in accordance with the Administration of Justice Act 1985 s 9(2)(fb) (see PARA 691) the Solicitors Act 1974 s 85 applies in relation to a manager or employee to whom the rules are applied who keeps an account with a bank or building society in pursuance of any such rules as it applies in relation to a solicitor who keeps such an account in pursuance of rules under s 32: Administration of Justice Act 1985 Sch 2 para 31A (prospectively added by the Legal Services Act 2007 Sch 16 paras 80, 118). The Solicitors Act 1974 s 85 applies to a person who is a registered foreign lawyer practising as a member of a multi-national partnership: see the Registered Foreign Lawyers Order 1991, SI 1991/2831.

9 Solicitors Act 1974 s 85(b) (as amended: see note 8). By virtue of the application of the Solicitors' Accounts Rules 1998 to recognised bodies (see PARA 836), the Solicitors Act 1974 s 85 applies in relation to a recognised

body which keeps an account with a bank (or as from a day to be appointed, a building society) in pursuance of the rules as it applies in relation to a solicitor who so keeps such an account: see the Administration of Justice Act 1985 Sch 2 para 31. As to the meaning of 'recognised body' see PARA 687 note 3.

UPDATE

839 Position in relation to banks or building societies

NOTE 8--Amendments made by Legal Services Act 2007 Sch 16 paras 36, 118 in force 31 March 2009: SI 2009/503. SI 1991/2831 replaced: Registered Foreign Lawyers Order 2009, SI 2009/1589.

NOTE 9--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/B. HANDLING CLIENT MONEY/840. Paying money into accounts.

840. Paying money into accounts.

A solicitor¹ who receives money paid in full or part settlement of the solicitor's bill or other notification of costs must deal with the money in one of four ways². A mixed payment of client money or controlled trust money³ as well as office money must either be split between a client account and office account as appropriate or placed without delay in a client account⁴.

1 As to the meaning of 'solicitor' see PARA 600 note 1.

2 Solicitors' Accounts Rules 1998 r 19(1). The four ways are:

177 (1) determine the composition of the payment without delay and deal with the money accordingly (r 19(1)(a)); or

178 (2) ascertain that the payment comprises of unpaid professional disbursements and place the entire sum in an office account at a bank or building society and by the end of the second working day following receipt either pay any unpaid professional disbursement or transfer a sum for its settlement to a client account (r 19(1)(b)); or

179 (3) pay the entire sum into a client account and transfer any office money out of the account within 14 days of receipt (r 19(1)(c));

180 (4) deal with receipt of costs from the Legal Services Commission under r 21(1)(b) (r 19(1)(d)).

As to the meaning of 'bank' see the Solicitors Act 1974 s 87(1); and PARA 835 note 4 (definition applied by the Solicitors' Accounts Rules 1998 r 2(1)(c)). As to the meaning of 'building society' see the Building Societies Act 1986; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856 (definition applied by the Solicitors' Accounts Rules 1998 r 2(2)(d)). A solicitor who properly requires payment of his fees from money held for the client or controlled trust in a client account must give or send a bill of costs to the client or paying party and then the money earmarked for costs becomes office money and must be transferred out of the client account within 14 days: see r 19(2), (3). Until compliance with r 19(2) payment on account is generally client money: r 19(4). A payment for an agreed fee must be paid into an office account: r 19(5).

3 As to the meaning of 'client money' see PARA 838 note 2 and as to the meaning of 'controlled trust money' see PARA 837 note 10.

4 Solicitors' Accounts Rules 1998 r 20(1), (2). If paid into a client account any office money must be transferred out within 14 days of receipt: r 20(3). Dispensations apply to payments from the Legal Services Commission: see r 21; and **LEGAL AID** vol 65 (2008) PARA 17 et seq. As to the meaning of 'client account' see PARA 838 note 3.

UPDATE

840 Paying money into accounts

TEXT AND NOTES 2, 4--Solicitors' Accounts Rules 1998 rr 2, 19-21 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/B. HANDLING CLIENT MONEY/841. Withdrawals from client account.

841. Withdrawals from client account.

Client money may be withdrawn¹ on the client's instructions where it is for the client's convenience². Otherwise client money and controlled trust money³ may only be withdrawn from a client account⁴ when it is:

- 1125 (1) properly required for certain payments⁵;
- 1126 (2) transferred to another client account⁶;
- 1127 (3) a refund to the solicitor⁷ of an advance no longer required to fund a payment on behalf of the client or controlled trust⁸;
- 1128 (4) money which has been paid into the account in breach of the rules (ie it has been paid into the wrong account)⁹;
- 1129 (5) money not covered by heads (1) to (4) above, where the solicitor complies with certain conditions¹⁰;
- 1130 (6) money not covered by heads (1) to (4) above, withdrawn from the account on the authorisation of the Solicitors Regulation Authority¹¹.

Office money may only be withdrawn from a client account when it is:

- 1131 (a) money properly paid into the account to open or maintain it¹²;
- 1132 (b) properly required for payment of the solicitor's costs¹³;
- 1133 (c) the whole or part of a payment into a client account¹⁴;
- 1134 (d) part of a mixed payment placed in a client account¹⁵; or
- 1135 (e) money which has been paid into a client account in breach of the rules¹⁶.

Money held for a client or controlled trust in a separate designated client account must not be used for payments for another client or controlled trust¹⁷. Generally money withdrawn from a general client account in relation to a particular client or controlled trust must not exceed money held on behalf of that client or trust¹⁸ and a client account must not be overdrawn¹⁹.

1 As to the meaning of 'client's money' see PARA 838 note 2. Unless transferring money from one general client account to another at the same bank or building society, a withdrawal from a client account requires the signature of a solicitor holding a current practising certificate or a registered European lawyer or a Fellow of the Institute of Legal Executives of at least three years' standing employed by such a solicitor or lawyer or a registered foreign lawyer who is a partner, director or member of the practice: see the Solicitors' Accounts Rules 1998 r 23(1)(a), (b), (d), (2). However in the case of an office dealing solely with conveyancing the withdrawal may also be signed by a licensed conveyancer employed by a solicitor holding a current practising certificate or a registered European lawyer: see r 23(1)(c). The withdrawal must not be made in cash: r 23(3).

2 See the Solicitors' Accounts Rules 1998 r 22(1)(e).

3 As to the meaning of 'controlled trust money' see PARA 837 note 10.

4 As to the meaning of 'client account' see PARA 838 note 3.

5 Solicitors' Accounts Rules 1998 r 22(1)(a)-(c), (2)(a)-(c). Such payments are payments to or on behalf of the client or in the execution of the particular trust, payment of a disbursement and to reimburse the solicitor for money spent on behalf of the client or the particular trust: r 22(1)(a)-(c), (2)(a)-(c).

6 See the Solicitors' Accounts Rules 1998 r 22(1)(d), (2)(d). In the case of controlled trust money it may also be transferred to an account other than a client account if the trustee's powers permit: see r 2(2)(e). There are certain restrictions on transfers between clients: see r 30.

7 As to the meaning of 'solicitor' see PARA 836 note 2.

8 See the Solicitors' Accounts Rules 1998 r 22(1)(f), (2)(f).

9 See the Solicitors' Accounts Rules 1998 r 22(1)(g), (2)(g). Such money must be withdrawn promptly upon discovery: see r 22(4).

10 See the Solicitors' Accounts Rules 1998 r 22(ga), (2)(ga). The conditions referred to in the text are that money may be withdrawn where the amount does not exceed £50 in relation to any one individual client or controlled trust matter and the solicitor:

181 (1) establishes the identity of the owner of the money (or makes reasonable attempts to do so) (r 22(2A)(a));

182 (2) makes adequate attempts to ascertain the proper destination of the money and return it to its rightful owner (unless doing so would incur unreasonable costs) (r 22(2A)(b));

183 (3) pays the funds to a charity (r 22(2A)(c));

184 (4) records the steps taken in accordance with heads (1)-(3) above and retains those records, together with all relevant documentation (see rr 22(2A)(d), 32(8A));

185 (5) keeps a central register of such withdrawals (rr 22(2A)(e), 32(13A)).

11 See the Solicitors' Accounts Rules 1998 r 22(1)(h), (2)(h). As to the Solicitors Regulation Authority see PARA 619.

12 Ie paid into the account under the Solicitors' Accounts Rules 1998 r 15(2)(a) (see PARA 838).

13 Ie payment under the Solicitors' Accounts Rules 1998 r 19(2), (3) (see PARA 840).

14 Ie under the Solicitors' Accounts Rules 1998 r 19(1)(c) (see PARA 840).

15 Ie under the Solicitors' Accounts Rules 1998 r 20(2)(b) (see PARA 840).

16 See the Solicitors' Accounts Rules 1998 r 22(3).

17 Solicitors' Accounts Rules 1998 r 22(7).

18 See the Solicitors' Accounts Rules 1998 r 22(5). However money may be paid out of a general client account if sufficient money is held and immediately transferred from a separate account held on behalf of that client or trust: see r 22(6).

19 See the Solicitors' Accounts Rules 1998 r 22(8). There are however two exceptions which are (1) where a controlled trustee makes payments on behalf of a controlled trust before realising sufficient assets to cover the payments; and (2) if a sole practitioner dies and the client accounts are frozen, overdrawn client accounts can be used to the extent of the money held in the frozen accounts: see r 22(8).

UPDATE

841 Withdrawals from client account

TEXT AND NOTES--Solicitors' Accounts Rules 1998 rr 2, 22, 23 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/B. HANDLING CLIENT MONEY/842. Requirement to make rules regarding interest.

842. Requirement to make rules regarding interest.

Until a day to be appointed the following provisions have effect¹. Rules made by the Solicitors Regulation Authority² must make provision requiring solicitors³, in cases prescribed by the rules, either to keep on deposit in a separate bank account at a bank or with a building society⁴ for the benefit of the client's money⁵ received for or on account of a client or to make good to the client out of the solicitor's own money a sum equivalent to the interest which would have accrued if the money so received had been so kept on deposit⁶. Nothing in the rules must affect any arrangement in writing, whenever made, between a solicitor and a client as to the application of the client's money or interest on it⁷.

As from a day to be appointed the following provisions have effect⁸. The rules made by the Authority⁹ may require a solicitor to pay interest, or sums in lieu of and equivalent to interest, to a client, any other person or any trust, for whom the solicitor holds money¹⁰. However the rules may prescribe the circumstances in which a solicitor may make arrangements to limit or exclude an obligation so imposed on the solicitor and prescribe the requirements to be met by and in relation to those arrangements¹¹.

1 The Solicitors Act 1974 s 33(1), (3), (4) is substituted and s 33(2) is amended by the Legal Services Act 2007 Sch 16, paras 1, 33, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The rules made under the Solicitors Act 1974 s 32 (see PARA 835). As to the Solicitors Regulation Authority see PARAS 619, 835 note 1.

3 As to the meaning of 'solicitor' see PARA 600 note 1.

4 As to the meanings of 'bank' and 'building society' see PARA 835 notes 4, 5.

5 As to the meaning of 'client' and 'client money' see PARA 835 note 6.

6 Solicitors Act 1974 s 33(1) (amended by the Building Societies Act 1968 Sch 18 para 11(1), (3); prospectively substituted (see note 1)). The cases in which a solicitor may be required by the rules to act as mentioned in s 33(1) may be defined, among other things, by reference to the amount of any sum received or the period for which it is or is likely to be retained or both: Solicitors Act 1974 s 33(2). Until a day to be appointed the rules may include provision for enabling a client (without prejudice to any other remedy) to require that any question arising under the rules in relation to the client's money be referred to and determined by the Solicitors Regulation Authority: s 33(2) (relevant wording prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 33(1), (3), Sch 23). The Solicitors Act 1974 s 33(2) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619). As to rules relating to interest see the Solicitors' Accounts Rules 1998 rr 24-28; and PARA 843. However an overseas practice is bound by the deposit interest requirements in the Solicitors' Code of Conduct 2007 r 15.15: see r 15.15; and PARA 843.

7 Solicitors Act 1974 s 33(4)(a) (prospectively substituted: see note 1). Except as provided by the rules, a solicitor is liable by virtue of the relation between solicitor and client to account to any client for interest received by the solicitor on money deposited at a bank or with a building society being money received or held for or on account of his clients generally: s 33(3) (amended by the Building Societies Act 1986 Sch 18 para 11(1), (3); and so prospectively substituted).

8 See note 1.

9 The rules made under the Solicitors Act 1974 s 32 (see PARA 835).

10 Solicitors Act 1974 s 33(1) (as prospectively substituted: see note 1).

11 Solicitors Act 1974 s 33(4) (as prospectively substituted: see note 1). Except as provided by the rules, a solicitor is not liable to account to any client, other person or trust for interest received by the solicitor on money held at a bank or building society in an account which is for money received or held for, or on account of the solicitor's clients, other persons or trusts, generally or that client, person or trust, separately: s 33(3) (as so prospectively substituted).

UPDATE

842 Requirement to make rules regarding interest

TEXT AND NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

NOTE 6--Solicitors' Accounts Rules 1998 rr 24, 25 amended, r 28 repealed on 31 March 2009. Solicitors' Code of Conduct 2007 r 15.15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/B. HANDLING CLIENT MONEY/843. Rules relating to interest.

843. Rules relating to interest.

When a solicitor¹ holds money in a separate designated client account for a client², or for a person funding all or part of the solicitor's fees, he must aim to obtain a reasonable rate of interest on the account and must account to the client or that person for all interest earned on the account³.

When a solicitor holds money in a general client account for a client or for a person funding all or part of the solicitor's fees, he must account to the client or that person for a fair sum in lieu of interest⁴. However there are exceptions to this rule⁵.

Where money has been held outside of the client account on the client's instructions⁶ the solicitor must account for all interest earned on the account⁷.

When money is held by a solicitor as a stakeholder the solicitor must pay interest or a sum in lieu of interest⁸ to the person to whom the stake is paid⁹.

1 As to the meaning of 'solicitor' see PARA 836 note 2.

2 As to the meaning of 'client' see PARA 837 note 3. As to the meaning of 'separate designated client account' see PARA 838 note 3. The Solicitors' Accounts Rules 1998 r 24 does not apply to controlled trust money: r 24(7).

3 See the Solicitors' Accounts Rules 1998 rr 24(1), 25(1). Where client money is held by an overseas practice and in regard to all the circumstances (including the amount of money, the length of time it is likely to be held and the law and prevailing custom of lawyers in the jurisdiction) interest ought in fairness to be earned for that client, the solicitor must ensure that:

186 (1) the client money is dealt with so that proper interest is earned upon it and paid to the client (Solicitors' Code of Conduct 2007 r 15.15(2)(a), (3));

187 (2) the client is paid a sum equivalent to the interest that would have been earned if the client money had earned proper interest (r 15.15(2)(b), (3)); or

188 (3) any alternative written agreement with the client setting out arrangements regarding the payment of interest on that money is carried out (r 15.15(2)(c), (3)).

4 See the Solicitors' Accounts Rules 1998 rr 24(2), 25(1). The sum in lieu of interest is calculated in accordance with r 25(2)-(4).

5 See the Solicitors' Accounts Rules 1998 r 24(3). The exceptions are:

189 (1) if the amount calculated is £20 or less (r 24(3)(a));

190 (2) if the solicitor holds a sum of money: (a) not exceeding £1,000 for a time not exceeding eight weeks; (b) not exceeding £2,000 for a time not exceeding four weeks; (c) not exceeding £10,000 for a time not exceeding two weeks; or (d) not exceeding £20,000 for a time not exceeding one week (r 24(3)(b)(i));

191 (3) if the solicitor holds a sum of money exceeding £20,000 for one week or less, unless it is fair and reasonable to account for a sum in lieu of interest having regard to all the circumstances (r 24(3)(ii));

192 (4) on money held for the payment of counsel's fees (and counsel has requested a delay in payment) or for the Legal Services Commission (r 24(3)(c), (d));

193 (5) on advance from the solicitor under r 15(2)(b) (see PARA 838) (r 24(3)(d));

194 (6) if a client and his solicitor have agreed to deal with matters differently (see rr 24(3)(e), 27).

Money held intermittently and money held for some part in a separate designated client account and for the rest of the time in a general client account may require the payment of interest despite the sum in lieu of interest being calculated at £20 or less: see r 24(4), (5).

6 lie under the Solicitors' Accounts Rules 1998 r 16(1)(a).

7 See the Solicitors' Accounts Rules 1998 r 24(6).

8 lie on the basis set out in the Solicitors' Accounts Rules 1998 r 24.

9 Solicitors' Accounts Rules 1998 r 26.

UPDATE

843 Rules relating to interest

TEXT AND NOTES--Solicitors' Accounts Rules 1998 rr 16, 24, 25 amended on 31 March 2009.

TEXT AND NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

NOTE 3--Solicitors' Code of Conduct 2007 r 15.15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/C. ACCOUNTING SYSTEMS/844.
Accounting systems.

C. ACCOUNTING SYSTEMS

844. Accounting systems.

The Solicitors' Accounts Rules 1998 provide rules regulating solicitors' accounting systems and records¹. Guidelines for Accounting Procedures and Systems have also been produced and solicitors may be required to justify any departure from them².

A solicitor must at all times keep properly written up accounting records to show his dealings with:

- 1136 (1) client money received, held or paid by the solicitor including any money held outside a client account under the relevant provisions³;
- 1137 (2) controlled trust money received, held or paid by the solicitor including such money held outside a client account under the relevant provisions⁴;
- 1138 (3) any office money relating to any client matter or to any controlled trust matter⁵.

All dealings with client money and any controlled trust money must be appropriately recorded in a client's cash account or in a record of sums transferred from the ledger account of one client to that of another and on the client side of a separate ledger account for each client or other person or controlled trust⁶.

If separate designated client accounts are used a combined cash account must be kept in order to show the total amount held in separate designated client accounts and a record of the amount held for each client must be made in a client ledger account⁷.

A solicitor is required to prepare a reconciliation statement every 14 weeks for controlled trust money held in a passbook-operated separate designated client account and least once every five weeks in other cases⁸.

Certain records (including bills and notification of costs) must be kept together centrally⁹ and the majority of documents and records (including those mentioned above) are to be kept for at least six years from the date of the last entry but some are required to be kept for at least two years¹⁰. Although most records may be kept on a computerised system original statements, passbooks, cheques and copy authorities should generally be retained as printed or otherwise issued¹¹.

1 See the Solicitors' Accounts Rules 1998 rr 29-33. As to the meaning of 'solicitor' see PARA 836 note 2. If a solicitor's practice owns all the shares in a recognised body which is an executor, trustee or nominee company, the practice and the recognised body must not operate shared client accounts: see r 31.

2 See the Solicitors' Accounts Rules 1998 r 29 and Appendix 3 to those rules. Such guidelines were produced by the Council of the Law Society with the concurrence of the Master of the Rolls: see the Solicitors' Accounts Rules 1998 r 29. However in practice the body now responsible for such guidelines is the Solicitors Regulation Authority (see PARA 619). The guidelines are a benchmark or broad statement of good practice and apply to both client money and controlled trust money: see the Solicitors' Accounts Rules 1998 Appendix 3. As to the meaning of 'client money' see PARA 838 note 2 and as to the meaning of 'controlled trust money' see PARA 837 note 10.

3 Solicitors' Accounts Rules 1998 r 32(1)(a). The relevant provisions mentioned in the text refer to r 16(1)(a) (see PARA 838).

4 Solicitors' Accounts Rules 1998 r 32(1)(b). The relevant provisions mentioned in the text refer to r 18(c) (see PARA 838).

5 Solicitors' Accounts Rules 1998 r 32(1)(c). As to the meaning of 'office money' see PARA 838 note 2. All dealing with office money that relates to any client or controlled trust matter must be recorded in an office cash account and office side of the client ledger account: see r 32(4).

6 See the Solicitors' Accounts Rules 1998 r 32(2). The current balance on each client ledger account must always be shown or readily ascertainable from the records: see r 32(5). Separate client ledger accounts are not necessarily required where a solicitor acts from both lender and borrower on a mortgage advance: see r 32(6). Suspense ledger accounts may be used only when the solicitor can justify their use: r 32(16). A centrally kept register (along with a record of steps taken under r 22(2A)(a)-(c)) must be kept of any client money or controlled trust money withdrawn in accordance with r 22(1)(ga), (2)(ga) (see PARA 841): see r 32(8A), (13A).

7 See the Solicitors' Accounts Rules 1998 r 32(3).

8 See the Solicitors' Accounts Rules 1998 r 32(7).

9 See the Solicitors' Accounts Rules 1998 r 32(8), (11)-(14).

10 See the Solicitors' Accounts Rules 1998 rr 32(9), (10), 33.

11 See the Solicitors' Accounts Rules 1998 r 32(15).

UPDATE

844 Accounting systems

TEXT AND NOTES--Solicitors' Accounts Rules 1998 rr 29, 31-32, Appendix 3 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/D. INSPECTION OF BANK ACCOUNTS ETC/845. Rules to inspect bank accounts.

D. INSPECTION OF BANK ACCOUNTS ETC

845. Rules to inspect bank accounts.

The Solicitors Regulation Authority¹ may make rules² empowering the Authority to require a solicitor³ to produce documents relating to any account kept by him at a bank or with a building society⁴ in connection with his practice, or in connection with any trust of which he is or formerly was a trustee, for inspection by a person appointed by the Authority pursuant to the rules⁵.

The Authority is at liberty to disclose information obtained in exercise of the powers conferred by such rules for use in investigating the possible commission of an offence by the solicitor and for use in connection with any prosecution of the solicitor consequent on the investigation⁶.

1 The Solicitors Act 1974 s 33A (added by the Access to Justice Act 1999 Sch 7 para 3) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)); see s 33A (amended by the Legal Services Act 2007 Sch 16 paras 1, 34(1), (2)(a), (3)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

2 Until a day to be appointed, such rules are to be made with the concurrence of the Master of the Rolls: Solicitors Act 1974 s 33A(1) (as added (see note 1); relevant wording prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 34(1), (2)(b), Sch 23). As to such rules see the Solicitors' Accounts Rules 1998 r 34; and PARA 846.

3 As to the meaning of 'solicitor' see PARA 600 note 1.

4 As to the meanings of 'bank' and 'building society' see PARA 835 notes 4, 5.

5 Solicitors Act 1974 s 33A(1) (as added and amended: see note 1). As from a day to be appointed the following applies where rules made under s 33A(1) have effect in relation to employees of solicitors by virtue of s 34A(1) (see PARA 622): s 34B(4) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 36). The Authority may disclose a report on or information about the accounts of any employee of a solicitor obtained in pursuance of such rules for use in investigating the possible commission of an offence by the solicitor or any employees of the solicitor, and in connection with any prosecution of the solicitor or any employees of the solicitor consequent on the investigation: Solicitors Act 1974 s 34B(5).

6 Solicitors Act 1974 s 33A(2) (as added and amended: see note 1).

UPDATE

845 Rules to inspect bank accounts

NOTE 2--Day appointed is 1 January 2010: SI 2009/3250. Solicitors' Accounts Rules 1998 r 34 amended on 31 March 2009.

NOTE 5--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/D. INSPECTION OF BANK ACCOUNTS ETC/846. Production of accounts and documents.

846. Production of accounts and documents.

Any solicitor¹ must at the time and place fixed by the Solicitors Regulation Authority² produce to any person appointed by the Authority any records, papers, client and controlled trust³ matter files, financial accounts and other documents, and any other information, necessary to enable preparation of a report on compliance with the Solicitors' Accounts Rules 1998⁴. A solicitor must be prepared to explain and justify any departures from the Guidelines for Accounting Procedures and Systems⁵.

The Authority⁶ is at liberty to disclose a report on or information about a solicitor's accounts obtained in the exercise of such powers for use in investigating the possible commission of an offence by the solicitor⁷ and for use in connection with any prosecution of the solicitor consequent on the investigation⁸.

1 As to the meaning of 'solicitor' see PARA 836 note 2.

2 The Solicitors' Accounts Rules 1998 refer to the 'Society' (ie the Law Society of England and Wales (see the Solicitors' Accounts Rules 1998 r 2(2)(w); and PARA 602 note 4). However in practice the body currently responsible for the regulation of solicitors and such rules is the Solicitors Regulation Authority (see PARA 619).

3 As to the meaning of 'client' see PARA 837 note 3 and as to the meaning of 'controlled trust' see PARA 837 note 10.

4 See the Solicitors' Accounts Rules 1998 r 34.

5 See the Solicitors' Accounts Rules 1998 r 34(6).

6 The Solicitors Act 1974 s 32 refers to the 'Council' (ie the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1))) but s 32(1), (4) is prospectively amended to refer to the 'Society' (ie the Law Society (see s 87(1); and PARA 602 note 4)): see s 32 (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (2)(a), (5)(a)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

7 As from a day to be appointed this includes any of the solicitor's employees: see the Solicitors Act 1974 s 32(4) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 32(1), (5)(c)). At the date at which this volume states the law no such day had been appointed.

8 Solicitors Act 1974 s 32(4) (amended by the Access to Justice Act 1999 Sch 7 para 2(a), Sch 15 Pt II). If any solicitor fails to comply with rules made under the Solicitors Act 1974 s 32, any person may make a complaint in respect of that failure to the Tribunal: s 32(3).

UPDATE

846 Production of accounts and documents

NOTES 2, 4, 5--Solicitors' Accounts Rules 1998 rr 34 amended on 31 March 2009.

NOTE 6--Amendments in force 31 March 2009: SI 2009/503.

NOTE 7--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/E. ACCOUNTANTS' REPORTS/847. Accountants' reports.

E. ACCOUNTANTS' REPORTS

847. Accountants' reports.

Until a day to be appointed the following provisions have effect¹. With certain exceptions, every solicitor², unless he satisfies the Solicitors Regulation Authority³ that it is unnecessary for him to do so, must once in each 12 month period ending with 31 October deliver to the Authority by post or otherwise an accountant's report containing such information as may be prescribed by rules⁴.

The Authority must make rules prescribing:

- 1139 (1) the qualification to be held by an accountant by whom a report may be given⁵;
- 1140 (2) the information to be contained in an accountant's report⁶;
- 1141 (3) the nature and extent of the examination to be made by the accountant of the books and accounts of a solicitor or his firm and of any other relevant documents with a view to the signing of an accountant's report⁷;
- 1142 (4) the form of an accountant's report⁸; and
- 1143 (5) the evidence, if any, which will satisfy the Authority that the delivery of an accountant's report is unnecessary and the cases where such evidence is or is not required⁹.

The rules may also include provision:

- 1144 (a) permitting a different accounting period from that specified¹⁰ in such special circumstances as may be prescribed¹¹; and
- 1145 (b) regulating any matters of procedure or incidental, ancillary or supplemental matters¹².

As from a day to be appointed¹³ the Authority may make rules requiring solicitors to provide the Authority with such reports signed by an accountant (an 'accountant's report') at such times or in such circumstances as may be prescribed by the rules¹⁴.

Under the Solicitors Accounts Rules 1998 a solicitor¹⁵ who has at any time during an accounting period held or received client money or controlled trust money¹⁶ or operated a client's own account as signatory must deliver to the Solicitors Regulation Authority¹⁷ an accountant's report for that period¹⁸.

1 The Solicitors Act 1974 s 34(1), (2) is substituted and s 34(3)-(5), (5A), (7), (8) repealed by the Legal Services Act 2007 Sch 16, paras 1, 35(1), (2), (4), Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to when a solicitor is exempted see PARA 850. Until a day to be appointed the provisions of the Solicitors Act 1974 s 34(1)-(3) (see the text and notes 2-7) apply to a recognised body as they apply to a solicitor: Administration of Justice Act 1985 Sch 2 para 5(1). As from a day to be appointed Sch 2 para 5 is substituted and Sch 2 para 5A is added by the Legal Services Act 2007 Sch 16 paras 80, 92, 93. Where rules made under the Solicitors Act 1974 s 34 are applied to recognised bodies, or to managers or employees of recognised

bodies, in accordance with ss 9(2)(f), 34(9), (10) they apply in relation to a recognised body, or manager or employee, as they are applied in relation to a solicitor: see the Administration of Justice Act 1985 Sch 2 paras 5, 5A (prospectively substituted and added). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'recognised body' see PARA 687 note 3.

3 The Solicitors Act 1974 s 34 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

4 Solicitors Act 1974 s 34(1) (prospectively substituted: see note 1). The current rules are the Solicitors Accounts Rules 1998. See also r 47, Appendix 5, where the form of the report is set out. The report must be delivered to the Authority not more than six months, or such other period as may be prescribed, after the end of the accounting period for the purposes of that report: Solicitors Act 1974 s 37(2) (amended by the Administration of Justice Act 1985 Sch 1 para 9(a); and prospectively substituted (see note 1)). Until the contrary is proved, a certificate under the hand of the secretary of the Authority is evidence that a solicitor or a recognised body has (or has not) delivered to the Authority an accountant's report or supplied any evidence required in connection with it: Solicitors Act 1974 s 34(7) (prospectively repealed: see note 1); Administration of Justice Act 1985 Sch 2 para 5(2) (prospectively substituted by the Legal Services Act 2007 Sch 16 paras 80, 92 so that the relevant wording no longer applies). As from a day to be appointed where rules made under the Solicitors Act 1974 s 34 have effect in relation to employees of solicitors by virtue of s 34A(1) (see PARA 622), the provisions of s 34(9), (10) (see PARA 851) apply in relation to such an employee as they apply in relation to a solicitor: s 34B(6) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 36).

5 Solicitors Act 1974 s 34(4)(a) (prospectively repealed: see note 1).

6 Solicitors Act 1974 s 34(4)(b) (prospectively repealed: see note 1).

7 Solicitors Act 1974 s 34(4)(c) (prospectively repealed: see note 1).

8 Solicitors Act 1974 s 34(4)(d) (prospectively repealed: see note 1).

9 Solicitors Act 1974 s 34(4)(e) (prospectively repealed: see note 1).

10 le specified under the Solicitors Act 1974 s 34(3) (prospectively repealed): see PARA 852.

11 Solicitors Act 1974 s 34(5)(a) (prospectively repealed: see note 1). See PARA 852.

12 Solicitors Act 1974 s 34(5)(b) (prospectively repealed: see note 1). Without prejudice to the generality of s 34(5)(b), rules may be made requiring a solicitor in advance of delivering an accountant's report to notify the Authority of the period which is to be the accounting period for the purposes of that report: s 34(5A) (added by the Administration of Justice Act 1985 Sch 1 para 9(b); and prospectively repealed (see note 1)).

13 See note 1.

14 Solicitors Act 1974 s 34(1) (as prospectively substituted: see note 1). The rules may specify requirements to be met by, or in relation to, an accountant's report (including requirements relating to the accountant who signs the report: s 34(2) (as prospectively substituted: see note 1). Failure to deliver an accountant's report in accordance with s 34(1) may result in an additional fee being charged when applying for a practising certificate: see s 11(3), (4) (prospectively substituted); and PARA 670.

15 As to the meaning of 'solicitor' see PARA 836 note 2.

16 As to the meaning of 'accounting period' see PARA 852. As to the meaning of 'client money' see PARA 838 note 2 and as to the meaning of 'controlled trust money' see PARA 837 note 10.

17 The Solicitors' Accounts Rules 1998 refer to the 'Society' (ie the Law Society of England and Wales (see the Solicitors' Accounts Rules 1998 r 2(2)(w); and PARA 602 note 4). However in practice the body currently responsible for the regulation of solicitors and such rules is the Solicitors Regulation Authority (see PARA 619).

18 See the Solicitors' Accounts Rules 1998 r 35. The report, which must be in the form published from time to time by the Authority, must be prepared and signed by an accountant who is qualified to make such a report by virtue of r 37: see rr 37, 47. The accountant's rights and duties must be contained within a letter of engagement: see r 38. Any change in the accountancy practice must be notified to the Authority: see r 39. The accounting records, files and other relevant documents must be examined at the solicitor's office and not that of the accountant and the accountant must examine them and make a series of checks and tests including the completion of a checklist in the form published from time to time by the Authority: see rr 40, 42, 46. The solicitor must provide the accountant with all necessary bank and building society details unless they fall within

the criteria of being privileged documents: see rr 41, 45. The accountant must note in his report any deviation from the Guidelines under r 29 (see PARA 844): see r 43. However certain matters (including a detailed check on compliance with the Guidelines) are outside the accountant's remit: see r 44. Where a practice has two or more offices separate reports may be delivered and separate accounting periods may be adopted: see r 48. The Authority may waive any of rr 35-48: see r 49.

UPDATE

847-852 Accountants' Reports

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

847 Accountants' reports

NOTES 17, 18--Solicitors' Accounts Rules 1998 rr 2, 35, 37-43, 45-47, 49 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/E. ACCOUNTANTS' REPORTS/848.
Registered foreign lawyers.

848. Registered foreign lawyers.

Until a day to be appointed the following provisions have effect¹. Unless the Solicitors Regulation Authority² is satisfied that it is unnecessary for him to do so, every registered foreign lawyer³ must, once in each period of 12 months ending with 31 October, deliver to the Authority a report signed by an accountant and containing the prescribed⁴ information⁵.

As from a day to be appointed the following provisions have effect⁶. The provisions under the Solicitors Act 1974 that relate to accountants' reports⁷ apply in relation to registered foreign lawyers as they apply in relation to solicitors⁸.

1 The Courts and Legal Services Act 1990 Sch 14 para 8 is substituted by the Legal Services Act 2007 Sch 16 paras 126, 134 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Courts and Legal Services Act 1990 Sch 14 para 8 refers to the 'Council' (ie the Council of the Law Society). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

4 Ie such information as may be prescribed by rules made under the Solicitors Act 1974 s 34: see PARA 847 et seq. For the prescribed information see the Accountant's Report Rules 1991; and PARAS 847-846.

5 Courts and Legal Services Act 1990 Sch 14 para 8(1). The provisions of the Solicitors Act 1974 s 34 apply in relation to accountants' reports so required and to registered foreign lawyers as they apply in relation to accountants' reports required by s 34(1) and solicitors: Courts and Legal Services Act 1990 Sch 14 para 8(2).

6 See note 1.

7 Ie the Solicitors Act 1974 s 34.

8 Courts and Legal Services Act 1990 Sch 14 para 8 (prospectively substituted: see note 1).

UPDATE

847-852 Accountants' Reports

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/E. ACCOUNTANTS' REPORTS/849.
Failure to produce accountants' reports.

849. Failure to produce accountants' reports.

If any solicitor¹ fails to comply with the provisions requiring him to provide an accountant's report², a complaint in respect of that failure may be made to the Solicitors Disciplinary Tribunal³ by or on behalf of the Solicitors Regulation Authority⁴.

1 As to the meaning of 'solicitor' see PARA 600 note 1.

2 The provisions mentioned in the text refer to the Solicitors Act 1974 s 34 and any rules made under it (see PARA 847): see s 34(6). However as from a day to be appointed s 34(6) is amended by the Legal Services Act 2007 Sch 16 paras 1, 35(1), (3) and only refers to rules made under the Solicitors Act 1974 s 34. At the date at which this volume states the law no such day had been appointed.

3 As to the Tribunal see PARA 906.

4 Solicitors Act 1974 s 34(6) (as prospectively amended: see note 2). The Solicitors Act 1974 s 34(6) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

UPDATE

847-852 Accountants' Reports

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/E. ACCOUNTANTS' REPORTS/850. When an accountant's report is unnecessary.

850. When an accountant's report is unnecessary.

Until a day to be appointed¹, a solicitor² who is exempt from the Solicitors' Accounts Rules 1998³ need not deliver an accountant's report unless he takes out a practising certificate⁴.

The Solicitors Regulation Authority⁵ may waive any of the provisions relating to accountants' reports⁶.

1 The Solicitors Act 1974 s 34(8) is repealed by the Legal Services Act 2007 Sch 16 paras 1, 35(1), (4), Sch 23 as from a day to be appointed under s 211(1). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'solicitor' see PARA 600 note 1.

3 As to exemptions from the Solicitors' Accounts Rules 1998 see PARA 836 note 2.

4 Solicitors Act 1974 s 34(8)(a) (prospectively repealed: see note 1). An accountant's report must in no case deal with books, accounts or documents kept by the solicitor in the course of employment by virtue of which he is exempt from the Solicitors' Accounts Rules 1998; and no examination may be made of any such books, accounts and documents under the Accountant's Report Rules 1998: Solicitors Act 1974 s 34(8)(b), (c) (so prospectively repealed).

5 The Solicitors' Accounts Rules 1998 refer to the 'Society' (ie the Law Society of England and Wales (see the Solicitors' Accounts Rules 1998 r 2(2)(w); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

6 See the Solicitors' Accounts Rules 1998 r 49.

UPDATE

847-852 Accountants' Reports

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

850 When an accountant's report is unnecessary

NOTE 6--Solicitors' Accounts Rules 1998 r 49 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/E. ACCOUNTANTS' REPORTS/851. Evidence of fraud.

851. Evidence of fraud.

As from a day to be appointed the following provisions have effect¹. Where an accountant, during the course of preparing an accountant's report:

- 1146 (1) discovers evidence of fraud or theft in relation to money held by a solicitor for a client or any other person (including money held on trust) or money held in an account of a client of a solicitor, or an account of another person, which is operated by the solicitor²; or
- 1147 (2) obtains information which the accountant has reasonable cause to believe is likely to be of material significance in determining whether a solicitor is a fit and proper person to hold money for clients or other persons (including money held on trust) or to operate an account of a client of the solicitor or an account of another person³,

the accountant must immediately give a report of the matter to the Solicitors Regulation Authority⁴.

1 The Solicitors Act 1974 s 34(9), (10) is added by the Legal Services Act 2007 Sch 16 paras 1, 35(1), (5) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Solicitors Act 1974 s 34(9)(a).

3 Solicitors Act 1974 s 34(9)(b).

4 Solicitors Act 1974 s 34(9). No duty to which an accountant is subject is to be regarded as contravened merely because of any information or opinion contained in a report under s 34(9): s 34(10). The Solicitors Act 1974 s 33(2) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

UPDATE

847-852 Accountants' Reports

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iii) Client Money/E. ACCOUNTANTS' REPORTS/852. The accounting period.

852. The accounting period.

The accounting period is the period for which the accounts of the solicitor¹ are ordinarily made up except that it must begin at the end of the previous accounting period and cover 12 months². There are however exceptions in relation to first and resumed reports, where a practice changes its normal accounting period and final reports where a solicitor stops holding or receiving client money or controlled trust money³.

1 As to the meaning of 'solicitor' see PARA 836 note 2.

2 Solicitors' Accounts Rules 1998 r 36(1); Solicitors Act 1974 s 34(3)(a), (b) (s 34(3) prospectively repealed by the Legal Services Act 2007 Sch 16 paras 1, 35(1), (2)). Until a day to be appointed where possible the accounting period must correspond to a period or consecutive periods for which the accounts of the solicitor or his firm are ordinarily made up: s 34(3)(c) (so prospectively repealed).

3 See the Solicitors' Accounts Rules 1998 r 36(2)-(5).

UPDATE

847-852 Accountants' Reports

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

852 The accounting period

NOTES 2, 3--Solicitors' Accounts Rules 1998 r 36 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iv) Professional Indemnity/853. The power to make rules.

(iv) Professional Indemnity

853. The power to make rules.

The Solicitors Regulation Authority¹ may make rules² ('indemnity rules') concerning indemnity against loss arising from claims in respect of any description of civil liability incurred by a solicitor³ or former solicitor or by an employee or former employee of a solicitor or former solicitor in connection with that solicitor's practice or with any trust⁴ of which he is or formerly was a trustee⁵. These rules may:

- 1148 (1) authorise or require the Authority to establish and maintain a fund or funds⁶;
- 1149 (2) authorise or require the Authority to take out and maintain insurance with authorised insurers⁷; or
- 1150 (3) require solicitors to take out and maintain insurance with authorised insurers⁸.

The rules so made may:

- 1151 (a) specify the terms and conditions on which indemnity is to be available and any circumstances in which the right to it is to be excluded or modified⁹;
- 1152 (b) provide for the management, administration and protection of any fund and require solicitors to make payments by way of contribution to any such fund¹⁰;
- 1153 (c) require solicitors or any class of solicitors to make payments by way of premium on any insurance policy maintained by the Authority by virtue of head (b) above¹¹;
- 1154 (d) prescribe the conditions which an insurance policy must satisfy for the purposes of head (c) above¹²;
- 1155 (e) authorise the Authority to determine the amount of any payments required by the rules subject to such limits or in accordance with such provisions as may be prescribed¹³;
- 1156 (f) specify circumstances in which the Authority may take proceedings against a solicitor for whom indemnity is provided and who has failed to comply with the rules¹⁴;
- 1157 (g) specify circumstances in which solicitors are exempt from the rules¹⁵;
- 1158 (h) empower the Authority to take steps to ascertain whether or not the rules are being complied with¹⁶; and
- 1159 (i) contain incidental, procedural or supplementary provisions¹⁷.

If any solicitor fails to comply with indemnity rules any person may make a complaint to the Solicitors Disciplinary Tribunal¹⁸. The Authority is empowered to put into effect any arrangements it considers necessary for the purpose of this indemnity¹⁹.

¹ The Solicitors Act 1974 s 37 refers to the 'Society': see s 37(1) (amended by the Legal Services Act 2007 Sch 16 paras 1, 38(a)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619). 'Charter' means the Royal Charter dated 26 February 1845, whereby the Society was incorporated, together with the Royal Charters supplemental

to it dated respectively 26 November 1872, 4 June 1903, 2 June 1909 and 10 March 1954: Solicitors Act 1974 s 87(1).

2 Until a day to be appointed such rules must be made with the concurrence of the Master of the Rolls: see the Solicitors Act 1974 s 37(1) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 38(a)). At the date at which this volume states the law no such day had been appointed.

3 As to the meaning of 'solicitor' see PARA 600 note 1.

4 'Trust' includes an implied or constructive trust and a trust where the trustee has a beneficial interest in the trust property, and also includes the duties incident to the office of a personal representative, and 'trustee' is construed accordingly: Solicitors Act 1974 s 87(1).

5 Solicitors Act 1974 s 37(1).

6 Solicitors Act 1974 s 37(2)(a).

7 Solicitors Act 1974 s 37(2)(b). 'Authorised insurers' means:

195 (1) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 348) to effect or carry out contracts of insurance of a relevant class (Solicitors Act 1974 s 87(1A)(a) (added by SI 2001/3649));

196 (2) a person who carries on an insurance market activity (Solicitors Act 1974 s 87(1A)(b) (as added));

197 (3) an EEA firm of the kind mentioned in the Financial Services and Markets Act 2000 Sch 3 para 5(d) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315), which has permission under Sch 3 para 15 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 315) to effect or carry out contracts of insurance of a relevant class (Solicitors Act 1974 s 87(1A)(c) (as added)); or

198 (4) a person who does not fall within head (1)-(3) above and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom (s 87(1A)(d) (as added)).

'Insurance market activity' means a regulated activity relating to contracts of insurance written at Lloyd's: see the Financial Services and Markets Act 2000 s 316(3).

8 Solicitors Act 1974 s 37(2)(c).

9 Solicitors Act 1974 s 37(3)(a).

10 Solicitors Act 1974 s 37(3)(b).

11 Solicitors Act 1974 s 37(3)(c).

12 Solicitors Act 1974 s 37(3)(d).

13 Solicitors Act 1974 s 37(3)(e).

14 Solicitors Act 1974 s 37(3)(f).

15 Solicitors Act 1974 s 37(3)(g).

16 Solicitors Act 1974 s 37(3)(h) (amended by the Legal Services Act 2007 Sch 16 paras 1, 38(b)(i), (ii)). As from a day to be appointed the Solicitors Act 1974 s 37(3)(h) is amended to enable rules to be made to empower the Authority to take such steps as it considers necessary or expedient to ascertain whether or not the rules are being or have been complied with: s 37(3) (prospectively amended by the Legal Services Act 2007 Sch 16 para 1, 38(b)(iii)). At the date at which this volume states the law no such day had been appointed.

17 Solicitors Act 1974 s 37(3)(i).

18 Solicitors Act 1974 s 37(4). As to the Tribunal see PARA 906 et seq.

19 Solicitors Act 1974 s 37(5). On an application for a practising certificate it is necessary to produce evidence of compliance with the indemnity rules: see PARA 669.

UPDATE

853 The power to make rules

NOTE 2--Day appointed is 1 January 2010: SI 2009/3250.

NOTE 16--Day appointed is 30 June 2008: SI 2008/1436.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(iv) Professional Indemnity/854. Rules relating to indemnity.

854. Rules relating to indemnity.

The main rules currently in force relating to the professional indemnity of solicitors are the Solicitors' Indemnity Rules 2007¹ and the Solicitors' Indemnity Insurance Rules 2008².

The Solicitors Indemnity Fund is established and maintained under the Solicitors' Indemnity Rules 2007³ and provides indemnity against losses arising from claims in respect of civil liability incurred in private practice⁴. Indemnity cover is provided under the rules in limited circumstances and applies in respect of any member of a practice which ceased on or before 13 August 2000⁵ and in respect of expired run-off claims⁶.

Under the Solicitors' Indemnity Insurance Rules 2008 solicitors must take out and maintain qualifying insurance⁷. If they are unable to do so they must apply to enter the Assigned Risks Pool provided under the rules⁸. Failure to comply with the Solicitors' Indemnity Insurance Rules 2008 may result in disciplinary action⁹.

The Solicitors' Code of Conduct 2007 provides that in relation to an overseas practice a solicitor must ensure that he is covered by insurance or other indemnity against professional liabilities¹⁰.

1 These rules are annexed to and continue in force under the Solicitors' Indemnity (Enactment) Rules 2007: see r 1. The Solicitors' Indemnity (Incorporated Practice) Rules 1991 also continue in force but only in respect of the indemnity periods commencing on 1 September 1991 and 1 September 1992: see the Solicitors' Indemnity (Enactment) Rules 2007 r 2.

2 The Solicitors' Indemnity Insurance Rules 2008 came into force on 1 October 2008 and apply to any indemnity period beginning on or after that date. The rules were made by the Council of the Law Society (see r 1) but in practice are governed by the Solicitors Regulation Authority (see PARA 619). The rules require solicitors, registered European lawyers, registered foreign lawyers and recognised bodies in private practice in England and Wales to take out and maintain professional indemnity insurance with qualifying insurers with effect from 1 October 2008: r 1.3. For these purposes 'solicitor' means a person who has been admitted as a solicitor and whose name is on the roll (within the meaning of the Solicitors Act 1974) and who practises as a solicitor whether or not he has in force a practising certificate as referred to in the Solicitors Act 1974 and also includes practice under the home title of a former registered European lawyer who has become a solicitor: Solicitors' Indemnity Insurance Rules 2008 r 3.1. As to the meaning of 'registered European lawyer' see PARA 542 note 2. As to the meaning of 'registered foreign lawyer' see PARA 628 note 2. As to the meaning of 'recognised body' see PARA 687 note 3.

3 The fund is administered by the Solicitors Indemnity Fund Limited: see Solicitors' Indemnity Rules 2007 r 21.

4 See the Solicitors' Indemnity Rules 2007 r 4.2.

5 See the Solicitors' Indemnity Rules 2007 rr 8.1-8.2.

6 See the Solicitors' Indemnity Rules 2007 rr 8.5-8.6.

7 See the Solicitors' Indemnity Insurance Rules 2008 rr 4-5. The Solicitors Regulation Authority provides a list of qualifying insurers on its website.

8 See the Solicitors' Indemnity Insurance Rules 2008 rr 10-15. The Assigned Risks Pool ('ARP') is managed by the ARP Manager who will issue the ARP policy: see rr 9, 11.1. The current ARP Manager is Capita London Market Services at 40 Dukes Place, London, EC3A 7NH.

9 See the Solicitors' Indemnity Insurance Rules 2008 rr 16-18.

10 See the Solicitors' Code of Conduct 2007 r 15.26(1), (2)(a). The extent and amount of the insurance or indemnity need not exceed the current requirements of the Solicitors' Indemnity Insurance Rules or any other rules made under the Solicitors Act 1974 s 37 (see PARA 853) but must be reasonable having regard to:

199 (1) the nature and extent of the risks that will be incurred in the overseas practice (see r 15.26(2)(b)(i));

200 (2) the local conditions in the relevant jurisdiction (see r 15.26(2)(b)(ii)); and

201 (3) the terms upon which insurance or other indemnity is available (see r 15.26(2)(b)(iii)).

As to the meaning of 'overseas practice' see PARA 874 note 2.

UPDATE

854 Rules relating to indemnity

TEXT AND NOTES--References to 'Solicitors' Indemnity Rules 2007' should refer to 'Solicitors' Indemnity (Enactment) Rules 2007'. Solicitors' Indemnity (Enactment) Rules 2007 amended on 31 March 2009. Solicitors' Indemnity Insurance Rules 2008 replaced by Solicitors' Indemnity Insurance Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(v) Financial Services/855. Regulation of financial services.

(v) Financial Services

855. Regulation of financial services.

The provision of financial services is mainly governed by the Financial Services and Markets Act 2000¹ and regulated by the Financial Services Authority². The Solicitors Regulation Authority³ is a designated professional body⁴ for the purposes of the Financial Services and Markets Act 2000 Pt XX⁵ and consequently activities that are regulated by the Act⁶ may be carried on by solicitors who are supervised and regulated by the Solicitors Regulation Authority⁷.

1 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 2.

2 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4.

3 The Financial Services and Markets Act 2000 (Designated Professional Bodies) Order 2001, SI 2001/1226, designates the Law Society for the purposes of the Financial Services and Markets Act 2000 Pt XX. However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

4 See the Financial Services and Markets Act 2000 (Designated Professional Bodies) Order 2001, SI 2001/1226, art 2.

5 See the Financial Services and Markets Act 2000 ss 325-333 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 749-757).

6 As to the activities that are regulated see the Financial Services and Markets Act 2000 s 22; the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84.

7 See the Financial Services and Markets Act 2000 Pt XX; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 749-757. As to the relevant rules regulating financial services in relation to solicitors see PARA 856.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(v) Financial Services/856. Rules relating to financial services.

856. Rules relating to financial services.

The Solicitors Regulation Authority¹ has rules governing the carrying on by those it regulates of activities regulated under the Financial Services and Markets Act 2000². The main rules are the Solicitors' Financial Services (Scope) Rules 2001³ and the Solicitors' Financial Services (Conduct of Business) Rules 2001⁴. However relevant provisions are also contained within the Solicitors' Code of Conduct 2007⁵.

The Solicitors' Financial Services (Scope) Rules 2001 set out the scope of the regulated activities⁶ which may be undertaken by firms⁷ which are not regulated by the Financial Services Authority⁸. These rules set out the basic conditions to be satisfied and impose certain restrictions⁹. The rules also prohibit such a firm from carrying on certain regulated activities¹⁰.

The Solicitors' Financial Services (Conduct of Business) Rules 2001 regulate the way in which firms which are not regulated by the Financial Services Authority carry on regulated activities¹¹. The rules also apply to firms which are regulated by the Financial Services Authority in respect of their non-mainstream regulated activities¹².

1 The Law Society is a designated professional body for the purposes of the Financial Services and Markets Act 2000 Pt XX: see the Financial Services and Markets Act 2000 (Designated Professional Bodies) Order 2001, SI 2001/1226, art 2; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 749. However in practice the responsibility for regulation and complaint handling has been transferred to the Solicitors Regulation Authority (see PARA 619).

2 See the Financial Services and Markets Act 2000 s 326(4); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 749.

3 The Solicitors' Financial Services (Scope) Rules 2001 came into force on 1 December 2001 and repeal the Solicitors' Investment Business Rules 1995: see the Solicitors' Financial Services (Scope) Rules 2001 r 7. They contain amendments to 1 July 2007. They were originally made by the Council of the Law Society with the concurrence of the Master of the Rolls but in practice are now governed by the Solicitors Regulation Authority: see note 1. As to the Solicitors' Financial Services (Scope) Rules 2001 see PARA 857 et seq.

4 The Solicitors' Financial Services (Conduct of Business) Rules 2001 came into force on 1 December 2001: see r 11. They contain amendments to 1 July 2007. They were originally made by the Council of the Law Society with the concurrence of the Master of the Rolls but in practice are now governed by the Solicitors Regulation Authority (see note 1). As to the Solicitors' Financial Services (Conduct of Business) Rules 2001 see PARA 860. There is a power of waiver under these rules: see r 10.

5 See the Solicitors' Code of Conduct 2007 r 19; and PARA 861.

6 The activities regulated under the Financial Services and Markets Act 2000 Pt XX (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84).

7 'Firm' means:

202 (1) a sole solicitor or registered European lawyer;

203 (2) a lawyers' partnership which includes at least one solicitor, registered European lawyer or recognised body and which is permitted for practice in England and Wales by the Solicitors' Code of Conduct 2007 r 12 (see PARAS 676-680);

204 (3) a recognised body: Solicitors' Financial Services (Scope) Rules 2001 r 8.

References to activities carried on by a firm include activities carried on by an individual as a principal, officer or employee of the firm: r 8. 'Partner' or 'partnership' refers only to an unincorporated firm and not to a firm which is incorporated as a limited liability partnership: r 8. As to the meaning of 'recognised body' see PARA 687 note 3. 'Registered European lawyer' means a person whose name is on the register of European lawyers maintained under the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119 (see PARA 541 et seq): Solicitors' Financial Services (Scope) Rules 2001 r 8.

8 See the Solicitors' Financial Services (Scope) Rules 2001 rr 1(1), 2.

9 Solicitors' Financial Services (Scope) Rules 2001 r 1(2)(a), (b). As to the restrictions and the basic conditions see rr 4, 5; and PARAS 857-858. 'Regulated activities' are activities regulated under the Financial Services and Markets Act 2000 Pt XX (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84).

10 Solicitors' Financial Services (Scope) Rules 2001 r 1(2)(c). As to the prohibitions see r 3; and PARA 859.

11 See the Solicitors' Financial Services (Conduct of Business) Rules 2001 rr 1, 2(a). The Solicitors' rules set out how certain information must be provided by firms which are not regulated by the Financial Services Authority: see r 3.

12 Solicitors' Financial Services (Conduct of Business) Rules 2001 r 2(b); guidance notes.

UPDATE

856 Rules relating to financial services

TEXT AND NOTES 5, 7--Solicitors' Code of Conduct 2007 r 12 amended on 31 March 2009.

NOTES 9-11--Solicitors' Financial Services (Scope) Rules 2001 rr 3, 5 amended on 20 January 2010.

NOTE 10--See also *Financial Services Authority v Fox Hayes* [2009] EWCA Civ 76, [2009] 1 BCLC 603.

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857. Basic conditions.

A firm¹ which is not regulated by the Financial Services Authority and which carries on any regulated activities² must ensure³:

- 1160 (1) the activities arise out of, or are complementary to, the provision of a particular professional service⁴ to a particular client⁵;
- 1161 (2) the manner of the provision by the firm of any service in the course of carrying on the activities is incidental to the provision by the firm of professional services⁶;
- 1162 (3) the firm accounts to the client for any pecuniary reward or other advantage which the firm receives from a third party⁷;
- 1163 (4) the activities are not of a description, nor do they relate to an investment of a description, specified in a particular order⁸ made by the Treasury⁹;
- 1164 (5) the firm does not carry on, or hold itself out as carrying on, a regulated activity other than one which is allowed by these rules or one in relation to which the firm is an exempt person¹⁰;
- 1165 (6) there is not in force any relevant order or direction¹¹ which prevents the firm from carrying on the activities¹²; and
- 1166 (7) the activities are not otherwise prohibited by the Solicitors' Financial Services (Scope) Rules 2001¹³.

1 As to the meaning of 'firm' see PARA 856 note 7.

2 Ie activities regulated under the Financial Services and Markets Act 2000 Pt XX (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84).

3 A firm which breaches the Solicitors' Financial Services (Scope) Rules 2001 may be committing a criminal offence and be subject to an order by the Financial Services Authority: see r 6.

4 'Professional service' means a service provided by a firm in the course of its practice and which does not constitute carrying on a regulated activity: Solicitors' Financial Services (Scope) Rules 2001 r 8.

5 Solicitors' Financial Services (Scope) Rules 2001 r 4(a). 'Client' includes a trustee or personal representative where appropriate: see r 8.

6 Solicitors' Financial Services (Scope) Rules 2001 r 4(b).

7 Solicitors' Financial Services (Scope) Rules 2001 r 4(c).

8 Ie an order made under the Financial Services and Markets Act 2000 s 327(6) (see **FINANCIAL SERVICES AND MARKETS** vol 49 (2008) PARA 751); and 'investment' means any of the investments specified in Pt III (definition applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

9 Solicitors' Financial Services (Scope) Rules 2001 r 4(d).

10 Solicitors' Financial Services (Scope) Rules 2001 r 4(e). 'Exempt person' means a person who is exempt from the general prohibition as a result of an exemption order made under the Financial Services and Markets Act 2000 s 38(1) (see **FINANCIAL SERVICES AND MARKETS** vol 48 (2008) PARA 330) or as a result of s 39(1) (see **FINANCIAL SERVICES AND MARKETS** vol 48 (2008) PARA 346) or s 285(2) or s 285(3) (see **FINANCIAL SERVICES AND MARKETS** vol 49 (2008) PARA 684) and who, in engaging in the activity in question, is acting in the course of business in respect of which that person is exempt: Solicitors' Financial Services (Scope) Rules 2001 r 8. As to the meaning of 'general prohibition' see the Financial Services and Markets Act 2000 s 19(2); and **FINANCIAL**

SERVICES AND MARKETS vol 48 (2008) PARA 80 (definition applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

11 le an order or direction under the Financial Services and Markets Act 2000 s 328 or s 329 (see **FINANCIAL SERVICES AND MARKETS** vol 49 (2008) PARAS 752-753).

12 Solicitors' Financial Services (Scope) Rules 2001 r 4(f).

13 Solicitors' Financial Services (Scope) Rules 2001 r 4(g).

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858. Restrictions.

The Solicitors' Financial Services (Scope) Rules 2001 place certain restrictions on a firm¹ which is not regulated by the Financial Services Authority². Restrictions are placed on:

- 1167 (1) recommending or making arrangements for a client to buy a packaged product³;
- 1168 (2) recommending a client to buy or dispose of any rights or interests, or making arrangements for a client to buy any rights or interests, in a personal pension scheme⁴;
- 1169 (3) recommending a client buy or subscribe for a security or a contractually based investment⁵;
- 1170 (4) managing assets belonging to another person in circumstances which involve the exercise of a discretion⁶;
- 1171 (5) recommending a client enter as borrower into a regulated mortgage contract⁷;
- 1172 (6) recommending a client enter as a home purchaser into a regulated home purchase plan⁸;
- 1173 (7) carrying on insurance mediation activities⁹;
- 1174 (8) recommending a client enter as reversion seller or plan provider into a regulated home reversion plan¹⁰.

Such a firm is also prevented from acting as a sponsor to an issue in respect of securities to be admitted for dealing on the London Stock Exchange or nominated adviser to an issue in respect of securities to be admitted for dealing on the Alternative Investment Market of the London Stock Exchange¹¹.

1 As to the meaning of 'firm' see PARA 856 note 7. A firm which breaches the Solicitors' Financial Services (Scope) Rules 2001 may be committing a criminal offence and be subject to an order by the Financial Services Authority: see r 6.

2 See the Solicitors' Financial Services (Scope) Rules 2001 r 5.

3 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(1). As to exceptions see r 5(1). 'Buy' or 'buying' includes acquiring for valuable consideration: r 8. 'Packaged product' means a life policy, a unit or share in a regulated collective investment scheme or an investment trust savings scheme whether or not held within an Individual Savings Account as prescribed in the Individual Savings Account Regulations 1998, SI 1998/1870, or a personal equity plan within the Personal Equity Plan Regulations 1989, SI 1989/469, or a stakeholder pension scheme: Solicitors' Financial Services (Scope) Rules 2001 r 8. 'Life policy' means a long term insurance contract other than a pure protection contract for a reinsurance contract but including a pension policy: r 8. 'Pure protection contract' means a long term insurance contract:

- 205 (1) under which the benefits are payable only in respect of death or of incapacity due to injury, sickness or infirmity;
- 206 (2) which provides that benefits are payable on death (other than a death due to accident) only where the death occurs within ten years of the date on which the life of the person in question was first insured under the contract, or where the death occurs before that person attains a specified age not exceeding 70 years;

207 (3) which has no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and

208 (4) which makes no provision for its conversion or extension in a manner which would result in its ceasing to comply with heads (1)-(3) above: r 8.

'Regulated collective investment scheme' means an investment company with variable capital, an authorised unit trust scheme or a scheme recognised under the Financial Services and Markets Act 2000 s 264, 270 or 272: see the Solicitors' Financial Services (Scope) Rules 2001 r 8. As to the meaning of 'authorised unit trust scheme' see the Financial Services and Markets Act 2000 s 237(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 603. As to the meaning of 'long term insurance contract' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, Sch 1, Pt II; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 90 (definition applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8). 'Investment trust savings scheme' means a dedicated service for investment in the securities of one or more investment trusts within a particular marketing group (and references to an investment trust savings scheme include references to securities to be acquired through that scheme): r 8. 'Investment trust' means a closed-ended company which is listed in the United Kingdom or another member state and: (a) is approved by the Inland Revenue under the Income and Corporation Taxes Act 1988 s 842 (or, in the case of a newly formed company, has declared its intention to conduct its affairs so as to obtain approval); or (b) is resident in another member state and would qualify for approval if resident and listed in the United Kingdom: Solicitors' Financial Services (Scope) Rules 2001 r 8. 'Stakeholder pension scheme' means a scheme established in accordance with the Welfare and Pensions Reform Act 1999 and the Stakeholder Pension Scheme Regulations 2000, SI 2000/1403 (see **SOCIAL SECURITY AND PENSIONS**): Solicitors' Financial Services (Scope) Rules 2001 r 8. 'Pension policy' means a right to benefits obtained by the making of contributions to an occupational pension scheme or to a personal pension scheme where the contributions are paid to a life office: r 8. 'Occupational pension scheme' means any scheme or arrangement which is comprised in one or more documents or agreements and which has, or is capable of having, effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions or otherwise, payable on termination of service, or on death or retirement, to or in respect of earners with qualifying service in an employment of any such description or category: r 8. 'Personal pension scheme' means any scheme or arrangement which is not an occupational pension scheme or a stakeholder pension scheme and which is comprised in one or more instruments or agreements, having or capable of having effect so as to provide benefits to or in respect of people on retirement, or on having reached a particular age, or on termination of service in an employment: r 8. 'Collective investment scheme' means (in accordance with the Financial Services and Markets Act 2000 s 235 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 603) (Collective Investment Schemes)) any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income, which are not excluded by the Financial Services and Markets Act (Collective Investment Schemes) Order 2001, SI 2001/1062: Solicitors' Financial Services (Scope) Rules 2001 r 8. 'Life office' means a person with permission to effect or carry out long term insurance contracts: r 8.

4 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(2).

5 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(3). As to the meanings of 'contractually based investment' and 'security' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/1062, art 3(1); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 89, 112 (definitions applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8). However for the purpose of the Solicitors' Financial Services (Scope) Rules 2001 these definitions do not include an investment which falls within the definition of a packaged product: r 8. As to the meaning of 'investment' see PARA 857 note 8.

6 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(4). 'Asset' means an investment: r 8.

7 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(7). As to the meaning of 'regulated mortgage contract' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 61(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 203 (definition applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

8 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(8). As to the meaning of 'regulated home purchase plan' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 63F(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 215 (definitions applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

9 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(6).

10 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(9). As to the meaning of 'regulated home reversion plan' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544,

art 63B(3), (7), (8); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 209 (definitions applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

11 See the Solicitors' Financial Services (Scope) Rules 2001 r 5(5).

UPDATE

858 Restrictions

TEXT AND NOTE 10--Add head (9) recommending a client to enter as agreement seller or agreement provider into a regulated sale and rent back agreement: Solicitors' Financial Services (Scope) Rules 2001 r 5(10) (added on 20 January 2010). As to the meanings of 'regulated sale and rent back agreement', 'agreement provider' and 'agreement seller' see the Solicitors' Financial Services (Scope) Rules 2001 r 8 (amended on 20 January 2010).

NOTE 11--Solicitors' Financial Services (Scope) Rules 2001 r 5(5) amended on 20 January 2010.

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859. Prohibited activities.

A firm must not carry on, or agree to carry on, any of the following activities¹:

- 1175 (1) market making in investments²;
- 1176 (2) buying, selling, subscribing for or underwriting investments as principal in certain situations³;
- 1177 (3) buying or selling investments with a view to stabilising or maintaining the market price of the investments⁴;
- 1178 (4) acting as a stakeholder pension scheme manager⁵;
- 1179 (5) entering into a broker funds arrangement⁶;
- 1180 (6) effecting and carrying out contracts of insurance as principal⁷;
- 1181 (7) establishing, operating or winding up a collective investment scheme⁸;
- 1182 (8) establishing, operating or winding up a stakeholder pension scheme or a personal pension scheme⁹;
- 1183 (9) managing the underwriting capacity of a Lloyd's syndicate as a managing agent at Lloyds¹⁰;
- 1184 (10) advising a person to become a member of a particular Lloyd's syndicate¹¹;
- 1185 (11) entering as provider into a funeral plan contract¹²;
- 1186 (12) entering into a regulated mortgage contract as lender or administering a regulated mortgage contract¹³;
- 1187 (13) entering into a regulated home purchase plan as provider or administering a regulated home purchase plan¹⁴; or
- 1188 (14) entering into a regulated home reversion plan as a provider or administering a regulated home reversion plan¹⁵.

1 As to the meaning of 'firm' see PARA 856 note 7. A firm which breaches the Solicitors' Financial Services (Scope) Rules 2001 may be committing a criminal offence and be subject to an order by the Financial Services Authority: see r 6.

2 Solicitors' Financial Services (Scope) Rules 2001 r 3(a). As to the meaning of 'investment' see PARA 857 note 8. 'Market making' means where a firm holds itself out as willing, as principal, to buy, sell or subscribe for investments of the kind to which the transaction relates at prices determined by the firm generally and continuously rather than in respect of each particular transaction: r 8. 'Transaction' means the purchase, sale, subscription or underwriting of a particular investment: r 8.

3 Solicitors' Financial Services (Scope) Rules 2001 r 3(b). As to the meaning of 'buying' see PARA 858 note 3.

4 Solicitors' Financial Services (Scope) Rules 2001 r 3(c).

5 Solicitors' Financial Services (Scope) Rules 2001 r 3(d). As to the meaning of 'stakeholder pension scheme' see PARA 858 note 3.

6 Solicitors' Financial Services (Scope) Rules 2001 r 3(e). 'Broker funds arrangement' means an arrangement between a firm and a life office (or operator of a regulated collective investment scheme) under which the life office (or operator of the regulated collective investment scheme) agrees to establish a separate fund whose composition may be determined by instructions from the firm and in which it is possible for more than one client to invest: r 8. As to the meanings of 'regulated collective investment scheme' and 'life office' see PARA 858 note 3. As to the meaning of 'client' see PARA 857 note 5.

7 Solicitors' Financial Services (Scope) Rules 2001 r 3(f).

8 Solicitors' Financial Services (Scope) Rules 2001 r 3(g). As to the meaning of 'collective investment scheme' see PARA 858 note 3.

9 Solicitors' Financial Services (Scope) Rules 2001 r 3(h). As to the meaning of 'personal pension scheme' see PARA 858 note 3.

10 Solicitors' Financial Services (Scope) Rules 2001 r 3(i).

11 Solicitors' Financial Services (Scope) Rules 2001 r 3(j).

12 Solicitors' Financial Services (Scope) Rules 2001 r 3(k). As to the meaning of 'funeral plan contract' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 59; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 200 (definition applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

13 Solicitors' Financial Services (Scope) Rules 2001 r 3(l). This does not apply if it is entered into in the firm's capacity as a trustee or personal representative and the borrower is a beneficiary under the trust, will or intestacy: r 3(l). As to the meaning of 'regulated mortgage contract' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 61(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 203 (definition applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

14 Solicitors' Financial Services (Scope) Rules 2001 r 3(m). This does not apply if it is entered into in the firm's capacity as a trustee or personal representative and the home purchaser is a beneficiary under the trust, will or intestacy: r 3(m). As to the meaning of 'regulated home purchase plan' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 63F(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 215 (definition applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

15 Solicitors' Financial Services (Scope) Rules 2001 r 3(n). This does not apply if it is entered into in the firm's capacity as a trustee or personal representative and the reversion seller is a beneficiary under the trust, will or intestacy: r 3(n). As to the meanings of 'regulated home reversion plan' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 63B(3), (7), (8); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 209 (definitions applied by the Solicitors' Financial Services (Scope) Rules 2001 r 8).

UPDATE

859 Prohibited activities

NOTE 15--Add head (15) entering into a regulated sale and rent back agreement as an agreement provider or administering a regulated sale and rent back agreement (unless this is in the firm's capacity as a trustee or personal representative and the agreement seller is a beneficiary under the trust, will or intestacy): Solicitors' Financial Services (Scope) Rules 2001 r 3(o) (amended on 20 January 2010). As to the meanings of 'regulated sale and rent back agreement', 'agreement provider' and 'agreement seller' see the Solicitors' Financial Services (Scope) Rules 2001 r 8 (amended on 20 January 2010).

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860. Conduct of business.

Where a firm¹ has agreed to carry out a transaction² it must do so as soon as possible, unless it believes that it is in the client's³ best interests not to do so⁴. The firm is required to keep records⁵ relating to transactions⁶ and commissions⁷ and, where it undertakes the regulated activity⁸ of safeguarding and administering investments, the firm must operate appropriate systems, including keeping appropriate records⁹.

1 As to the meaning of 'firm' see the Solicitors' Financial Services (Scope) Rules 2001; and PARA 856 note 7 (definition applied by the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 12).

2 As to the meaning of 'transaction' see PARA 859 note 2 (definition applied by the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 12). There are particular requirements where the transaction relates to packaged products on an execution only basis: see r 8. Where a firm undertakes insurance mediation activities for a client it must comply with detailed requirements: see r 8A, Appendix.

3 As to the meaning of 'client' see PARA 857 note 5 (definition applied by the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 12).

4 See the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 4.

5 Such records must be kept for at least six years: see the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 9.

6 See the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 5.

7 See the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 6.

8 As to the meaning of 'regulated activity' see PARA 856 note 9 (definition applied by the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 12).

9 See the Solicitors' Financial Services (Conduct of Business) Rules 2001 r 7.

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861. Maintaining independence.

The Solicitors' Code of Conduct 2007¹ requires a solicitor engaged in regulated activities² to maintain his independence by making certain prohibitions³. The solicitor must not be an appointed representative⁴ or have any active involvement in a separate business which is an appointed representative⁵. Nor must a solicitor have any arrangement with other persons under which the solicitor could be constrained to recommend to clients or effect for them (or refrain from doing so) transactions:

- 1189 (1) in some investments but not others⁶;
- 1190 (2) with some persons but not others⁷; or
- 1191 (3) through the agency of some persons but others⁸, or

have any arrangement with other persons under which the solicitor could be constrained to introduce or refer clients or other persons with whom he deals to some persons but not others⁹.

1 As to the Solicitors' Code of Conduct generally see PARA 830 et seq.

2 'Regulated activity' means an activity specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 89 et seq): Solicitors' Code of Conduct 2007 r 19(4)(e).

3 See the Solicitors' Code of Conduct 2007 r 19, introduction. Rule 19 does not apply to an overseas practice except in relation to regulated activities conducted from an office in Scotland or Northern Ireland or into the UK from an office outside the UK: see r 15.19.

4 Solicitors' Code of Conduct 2007 r 19(1)(a). As to the meaning of 'appointed representative' see the Financial Services and Markets Act 2000 s 39(2); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 346 (definition applied by the Solicitors' Code of Conduct 2007 r 19(4)(a)).

5 Solicitors' Code of Conduct 2007 r 19(2). A solicitor may however have an active involvement with an appointed representative where the appointed representative is an independent financial adviser: r 19(2).

6 Solicitors' Code of Conduct 2007 r 19(1)(b)(i). 'Investment' means any of the investments specified in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, Pt III (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 88 et seq): Solicitors' Code of Conduct 2007 r 19(4)(c). Rule 19(1)(b), (c) does not apply to arrangements in connection with regulated mortgage contracts, general insurance contracts or pure protection contracts: r 19(3). As to the meaning of 'regulated mortgage contract' see the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, art 61(3); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 203 (definition applied by the Solicitors' Code of Conduct 2007 r 19(4)(f)). 'General insurance contract' is any contract of insurance within the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544, Sch 1 Pt 1 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 90): Solicitors' Code of Conduct 2007 r 19(4)(b). As to the meaning of 'pure protection contract' see the Solicitors' Financial Services (Scope) Rules 2001 r 8(1); PARA 858 note 3 (definition applied by the Solicitors' Code of Conduct 2007 r 19(4)(d)).

7 Solicitors' Code of Conduct 2007 r 19(1)(b)(ii). See note 6.

8 Solicitors' Code of Conduct 2007 r 19(1)(b)(iii). See note 6.

9 Solicitors' Code of Conduct 2007 r 19(1)(c). See note 6.

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(vi) Compensation

862. Duty to establish and maintain compensation fund.

Until a day to be appointed the following provisions have effect¹. The Solicitors Regulation Authority² must maintain and administer a compensation fund³ and may make rules about the fund and the procedure for making grants from it⁴.

As from a day to be appointed the following provisions have effect⁵. Compensation rules may require or authorise the Authority to establish or maintain a fund or funds ('compensation funds') for the purpose of making grants in respect of compensation claims⁶.

¹ The Solicitors Act 1974 s 36 is substituted, s 36A is added and Sch 2 repealed by the Legal Services Act 2007 Sch 16 paras 1, 37, 79, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

² The Solicitors Act 1974 ss 36, 36A, Sch 2 refer to the 'Council' (ie the Council of the Law Society) or the 'Society' (ie the Law Society). In practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

³ Solicitors Act 1974 s 36(1), Sch 2 para 1 (prospectively repealed: see note 1). The fund is held on trust by the Authority for the purposes of s 36 and Sch 2: Sch 2 para 1. The following are to be credited to the fund:

209 (1) all annual contributions and, when relevant, the special levy, paid to the Authority by each solicitor on taking out his practising certificate (see Sch 2 paras 2(4), 6(a) (as so prospectively repealed));

210 (2) all interest, dividends and other income and accretions of capital from investments of the fund or any part of it (Sch 2 para 6(b) (as so prospectively repealed));

211 (3) the proceeds of any realisation of any investments of the fund (Sch 2 para 6(c) (as so prospectively repealed));

212 (4) all money borrowed for the purposes of the fund (Sch 2 para 6(d) (as so prospectively repealed));

213 (5) all sums received by the Authority under any insurance effected by the Authority under Sch 2 para 5 (Sch 2 para 6(e) (as so prospectively repealed));

214 (6) all sums received by the Authority under its right of subrogation under s 36(4) (Sch 2 para 6(f) (as so prospectively repealed)); and

215 (7) any other money which may belong or accrue to the fund or be received by the Authority in respect of it (Sch 2 para 6(g) (as so prospectively repealed)).

The fund is applicable:

216 (a) for payment of any costs, charges and expenses of establishing, maintaining, administering and applying the fund (Sch 2 para 7(a) (as so prospectively repealed));

217 (b) for payment of any premiums on insurance effected under Sch 2 para 5 (Sch 2 para 7(b) (as so prospectively repealed));

- 218 (c) for repayment of any money borrowed for the purposes of the fund and for payment of any interest on it (Sch 2 para 7(c) (as so prospectively repealed));
- 219 (d) for payment of any grants which the Authority may make under s 36 (Sch 2 para 7(d) (as so prospectively repealed));
- 220 (e) for payment of all costs, charges and expenses incurred by the authority by virtue of s 35, Sch 1 para 1(1)(a) (see PARA 890) and of any costs or damages incurred by the Authority, its employees or agents for any act or omission done or made by it or them in good faith and in the execution of the powers of intervention conferred by Sch 1 Pt II (paras 5-12) (see PARA 891 et seq) (Sch 2 para 7(e) (as so prospectively repealed)); and
- 221 (f) for payment of any other sums properly payable out of the fund by virtue of s 36 or Sch 2 (Sch 2 para 7(f) (as so prospectively repealed)).

The Authority may invest any money which forms part of the fund in securities in which trustees are authorised by law to invest trust funds in their hands (Sch 2 para 3); may borrow up to a total of £100,000 for the purposes of the fund from any lender and may charge any investments in the fund as security for any such loan (Sch 2 para 4 (amended by the Government Trading Act 1990 s 4, Sch 2 Pt I)); and may insure with any authorised insurers for such purposes and on such terms as deemed expedient in relation to the fund (Solicitors Act 1974 Sch 2 para 5). As to the meaning of 'authorised insurers' see PARA 853 note 7.

4 See the Solicitors Act 1974 s 36(8). As to such rules see the Solicitors' Compensation Fund Rules 1995 (last amended 1 July 2007).

5 See note 1.

6 Solicitors Act 1974 s 36A(1) (prospectively added: see note 1). Such rules may require solicitors, or solicitors of a description prescribed in the rules, to make contributions to compensation funds of such amounts, at such times and in such circumstances, as may be prescribed in or determined in accordance with the rules and any amount so payable may be recovered as a debt to the Authority: s 36A(2), (3) (so prospectively added). This does not, however, apply to a solicitor who is a Crown Prosecutor: s 36A(4) (so prospectively added).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

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863. Compensation grants.

Until a day to be appointed the following provisions have effect¹. The Solicitors Regulation Authority² may make a grant out of the fund for the purpose of relieving loss or hardship³ where it is satisfied:

- 1192 (1) that a person has suffered, or is likely to suffer, loss in consequence of dishonesty on the part of a solicitor or of an employee of a solicitor in connection with that solicitor's practice or purported practice or in connection with any trust⁴ of which that solicitor is or formerly was a trustee⁵; or
- 1193 (2) that a person has suffered, or is likely to suffer, hardship in consequence of failure on the part of a solicitor to account for money which has come to his hands in connection with his practice or purported practice or in connection with any trust of which he is or formerly was a trustee⁶; or
- 1194 (3) that a solicitor has suffered, or is likely to suffer, loss or hardship by reason of his liability to any of his or his firm's clients⁷ in consequence of some act or default of any of his partners or employees in circumstances where but for the liability of that solicitor a grant might have been made out of the compensation fund to some other person⁸.

As from a day to be appointed the following provisions apply⁹. The Authority may make rules concerning the grant of compensation¹⁰ by the Authority in respect of loss that a person has suffered, or is likely to suffer, as a result of:

- 1195 (a) an act or omission of a solicitor or former solicitor¹¹;
- 1196 (b) an act or omission of an employee or former employee of a solicitor or former solicitor¹²;
- 1197 (c) the exercise by the Authority of its powers of intervention¹³.

The rules may (among other things) make provision:

- 1198 (i) as to the circumstances in which such grants may and may not be made¹⁴;
- 1199 (ii) as to the form and circumstances in which a compensation claim is to be made¹⁵;
- 1200 (iii) as to the procedure for determining compensation claims¹⁶;
- 1201 (iv) for the making of grants in respect of a compensation claim before it is finally determined¹⁷;
- 1202 (v) for a grant to be made by way of loan in such circumstances and on such terms as may be prescribed in, or determined in accordance with, the rules¹⁸;
- 1203 (vi) for a grant to be made by way of making good a deficiency in monies held in trust by the Authority under particular provisions¹⁹;
- 1204 (vii) as to the minimum and maximum grants payable in respect of a compensation claim (or a claim of a prescribed description)²⁰.

¹ The Solicitors Act 1974 s 36 is substituted and Sch 2 repealed by the Legal Services Act 2007 Sch 16 paras 1, 37, 79, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

- 2 The Solicitors Act 1974 ss 36, 36A, Sch 2 refer to the 'Council' (ie the Council of the Law Society) or the 'Society' (ie the Law Society). In practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).
- 3 The making of a grant is entirely within the discretion of the Authority, but where a grant is refused, the Authority must state the reasons for the refusal: Solicitors Act 1974 s 36(7) (prospectively substituted: see note 1). As to the application of the Solicitors Act 1974 s 36 to grants in respect of recognised bodies see the Administration of Justice Act 1985 s 9(6), Sch 2 para 6(2), (3); and PARA 708; and as to its application to grants in respect of registered foreign lawyers see the Courts and Legal Services Act 1990 s 89, Sch 14 para 6(1), (2); and PARA 868.
- 4 As to the meaning of 'trust' see PARA 835 note 4.
- 5 Solicitors Act 1974 s 36(2)(a) (prospectively substituted: see note 1). The Authority is entitled to exclude compensation for consequential loss under s 36(2)(a): see *R v Law Society, ex p Reigate Projects Ltd* [1992] 3 All ER 232, [1993] 1 WLR 1531, DC.
- 6 Solicitors Act 1974 s 36(2)(b) (prospectively substituted: see note 1).
- 7 As to the meaning of 'client' see PARA 835 note 6.
- 8 Solicitors Act 1974 s 36(2)(c) (prospectively substituted: see note 1). A grant under this head may be made by way of loan upon such terms and conditions as the Authority may determine, including terms and conditions as to the time and manner of repayment, the payment of interest and the giving of security for repayment: s 36(3). The Authority may, on such terms, if any, as it thinks fit, waive or refrain from enforcing repayment, the payment of any interest or any of the terms and conditions of the loan: s 36(3). A grant may not be made under s 36(2)(c) unless the Authority is satisfied that no other means of making good the loss is available: see the Solicitors' Compensation Fund Rules 1995 r 3.
- 9 See note 1.
- 10 As to the Authority see note 2. The Authority may prepare and publish guidance as to the criteria it will apply in deciding whether to make a grant in respect of a compensation claim, or any part of a compensation claim: Solicitors Act 1974 s 36(5) (as prospectively substituted: see note 1). Where the Authority decides not to make a grant in respect of a compensation claim, or any part of a compensation claim or to make a grant of less than the amount claimed, it must give reasons for its decision: s 36(6) (as so prospectively substituted).
- 11 Solicitors Act 1974 s 36(1)(a) (as prospectively substituted: see note 1).
- 12 Solicitors Act 1974 s 36(1)(b) (as prospectively substituted: see note 1).
- 13 Solicitors Act 1974 s 36(1)(c) (as prospectively substituted: see note 1). The power of intervention mentioned in the text refers to the Authority's powers under Sch 1 Pt 2 (see PARAS 890-894).
- 14 Solicitors Act 1974 s 36(2)(a) (as prospectively substituted: see note 1). The circumstances which may be prescribed by virtue of s 36(2)(a) include in particular: (1) the nature of the loss; (2) in case within s 36(1)(a) or s 36(1)(b) the nature of the act or omission: s 36(3).
- 15 Solicitors Act 1974 s 36(2)(b) (as prospectively substituted: see note 1). 'Compensation claim' means a claim for the Authority to make a grant of the kind mentioned in s 36(1) (as prospectively substituted): s 36(8) (as so prospectively substituted).
- 16 Solicitors Act 1974 s 36(2)(c) (as prospectively substituted: see note 1).
- 17 Solicitors Act 1974 s 36(2)(d) (as prospectively substituted: see note 1).
- 18 Solicitors Act 1974 s 36(2)(e) (as prospectively substituted: see note 1).
- 19 Solicitors Act 1974 s 36(2)(f) (as prospectively substituted: see note 1). The provisions mentioned in the text are Sch 1 paras 6, 6A (see PARA 892). For the purposes of s 36(2)(f) there is a deficiency if the monies are insufficient to satisfy the claims of all persons with a beneficial interest in the monies: s 36(4).
- 20 Solicitors Act 1974 s 36(2)(g) (as prospectively substituted: see note 1).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

863 Compensation grants

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 8--Solicitors' Compensation Fund Rules 1995 r 3 replaced by Solicitors' Compensation Fund Rules 2009 r 5.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(vi) Compensation/864. Use of compensation fund other than for grants.

864. Use of compensation fund other than for grants.

As from a day to be appointed the following provisions have effect¹. The Solicitors Regulation Authority² may invest³ any money which forms part of a compensation fund⁴. A compensation fund may be applied by the Authority for the following purposes in addition to the making of grants for compensation⁵. Those purposes are:

- 1205 (1) payment of premiums on insurance policies⁶ taken out in relation to compensation funds⁷;
- 1206 (2) repayment of money borrowed by the Authority for the purposes of the fund and payment of interest on any money so borrowed⁸;
- 1207 (3) payment of any other costs, charges or expenses incurred by the Authority in establishing, maintaining, protecting, administering or applying the fund⁹;
- 1208 (4) payment of any costs, charges or expenses incurred by the Authority in exercising its powers of intervention¹⁰;
- 1209 (5) payment of any costs or damages incurred by the Authority, its employees or agents as a result of proceedings against it or them for any act or omission of its or theirs in good faith and in the exercise or purported exercise of such powers¹¹.

1 The Solicitors Act 1974 s 36A is added by the Legal Services Act 2007 Sch 16 paras 1, 37 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 36A refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). In practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

3 Such investments must be any investments in which trustees may invest under the general power of investment under the Trustee Act 2000 s 3 (as restricted by ss 4, 5) (see TRUSTS); Solicitors Act 1974 s 36A(5) (prospectively added; see note 1).

4 Solicitors Act 1974 s 36A(5) (prospectively added; see note 1).

5 Solicitors Act 1974 s 36A(8) (prospectively added; see note 1).

6 The Authority may insure with authorised insurers in relation to compensation funds for such purposes and on such terms as it considers appropriate: Solicitors Act 1974 s 36A(6) (prospectively added; see note 1).

7 Solicitors Act 1974 s 36A(9)(a) (prospectively added; see note 1).

8 Solicitors Act 1974 s 36A(9)(b) (prospectively added; see note 1).

9 Solicitors Act 1974 s 36A(9)(c) (prospectively added; see note 1).

10 Solicitors Act 1974 s 36A(9)(d) (prospectively added; see note 1). The powers of intervention mentioned in the text are the powers under Sch 1 Pt 1 (see PARAS 623, 890-892).

11 Solicitors Act 1974 s 36A(9)(e) (prospectively added; see note 1).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(vi) Compensation/865. Borrowing.

865. Borrowing.

As from a day to be appointed the following provisions have effect¹. The Solicitors Regulation Authority² may, in such circumstances and subject to such conditions as may be prescribed in or determined in accordance with compensation rules³:

- 1210 (1) borrow for the purposes of a compensation fund⁴;
- 1211 (2) charge investments which form part of a compensation fund as security for borrowing by the Authority for the purposes of that fund⁵.

¹ The Solicitors Act 1974 s 36A is added by the Legal Services Act 2007 Sch 16 paras 1, 37 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

² The Solicitors Act 1974 s 36A refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). In practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

³ The rules made under the Solicitors Act 1974 s 36(1) (see PARA 862).

⁴ Solicitors Act 1974 s 36A(7)(a) (prospectively added: see note 1).

⁵ Solicitors Act 1974 s 36A(7)(b) (prospectively added: see note 1).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(vi) Compensation/866. Subrogation.

866. Subrogation.

Until a day to be appointed¹, where a grant out of the fund is made otherwise than by way of loan² or is made by way of loan³ which has been in whole or in part waived⁴ or which the borrower has failed to repay in full or in part⁵, then the Solicitors Regulation Authority⁶ is subrogated⁷ to any rights and remedies of the person to whom the grant is made in relation to the act or default in respect of which it is made, and is entitled, upon giving him a sufficient indemnity against costs, to require him, whether before or after payment of the grant, to sue in his own name, but on behalf of the Authority, for the purpose of giving effect to the Authority's rights, and to permit the Authority to have the conduct of the proceedings⁸.

As from a day to be appointed⁹ the Authority may make rules for the Authority to be subrogated, to such extent as may be prescribed¹⁰, to any rights and remedies of a person to whom a grant is made in relation to the loss in respect of which the grant is made¹¹.

1 The Solicitors Act 1974 s 36 is substituted by the Legal Services Act 2007 Sch 16 paras 1, 37 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Solicitors Act 1974 s 36(4)(a).

3 Solicitors Act 1974 s 36(4)(b).

4 Solicitors Act 1974 s 36(5)(a).

5 Solicitors Act 1974 s 36(5)(b).

6 The Solicitors Act 1974 s 36 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). In practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

7 The Authority is subrogated:

222 (1) in the case of a grant by way of loan, to the extent to which repayment has been waived or default made in repayment (Solicitors Act 1974 s 36(6)(a)); and

223 (2) for any other grant, to the extent of the amount of the grant (s 36(6)(b)).

8 Solicitors Act 1974 s 36(4).

9 See note 1.

10 'Prescribed' means prescribed by rules under the Solicitors Act 1974 s 36(1) (as prospectively substituted).

11 Solicitors Act 1974 s 36(2)(h) (prospectively substituted: see note 1).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(vi) Compensation/867. Compensation fund rules.

867. Compensation fund rules.

The main rules currently in force relating to the solicitors' compensation fund are the Solicitors' Compensation Fund Rules 1995¹. These rules allow for grants to be made in respect of persons not authorised to practise² and set out the application process for a compensation grant³. Provision is made by the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991 in relation to the contributions to be made by registered foreign lawyers⁴.

1 The Solicitors' Compensation Fund Rules 1995 were made on 26 January 2005 and last amended on 1 July 2007. They were originally made by the Council of the Law Society but in practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

2 See the Solicitors' Compensation Fund Rules 1995 r 2.

3 See the Solicitors' Compensation Fund Rules 1995 rr 5-15. The rules also contain guidelines on exercising the discretion conferred on the Authority under the Solicitors Act 1974 s 36(2) (see PARA 863), the Administration of Justice Act 1985 Sch 2 para 6(2) (see PARA 708) and the Courts and Legal Services Act 1990 Sch 14 para 6(1) (see PARA 868): see the Solicitors' Compensation Fund Rules 1995 r 16, Schedule.

4 The Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991 were made on 8 October 1991 and last amended on 6 April 2001. They were originally made by the Council of the Law Society but in practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

867 Compensation fund rules

TEXT AND NOTES--Solicitors' Compensation Fund Rules 1995 replaced by Solicitors' Compensation Fund Rules 2009. Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991 replaced by Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(vi) Compensation/868. Registered foreign lawyers.

868. Registered foreign lawyers.

Until a day to be appointed the following provisions have effect¹. On an application for registration² a foreign lawyer³ must pay to the Solicitors Regulation Authority⁴ an initial contribution to the compensation fund⁵ of such amount as the Authority may from time to time determine⁶. On each application for renewal of his registration, a registered foreign lawyer must pay to the Authority:

- 1212 (1) an annual contribution⁷; and
- 1213 (2) a further contribution to the compensation fund of such amount as the Authority may from time to time determine, but the Authority may only require such a contribution if it appears from his application that at any time during the period specified therein the registered foreign lawyer has either held or received clients' money in connection with a multi-national partnership⁸ of which he is or was a member, or that he is or was an officer at any time during that period of a recognised body⁹ which has held or received clients' money¹⁰.

Where the Authority is satisfied:

- 1214 (a) that a person has suffered or is likely to suffer loss in consequence of dishonesty on the part of a registered foreign lawyer, or of an employee of a registered foreign lawyer, in connection with the practice of the multi-national partnership of which that lawyer is or was a member or in connection with any trust of which that lawyer is or was a trustee by virtue of his being a member of that partnership¹¹;
- 1215 (b) that a person has suffered or is likely to suffer hardship in consequence of failure on the part of a registered foreign lawyer to account for money which has come into his hands in connection with the practice of the multi-national partnership of which he is or was a member, or in connection with any trust of which he is or was a trustee by virtue of his being a member of that partnership¹²;
- or
- 1216 (c) that a registered foreign lawyer has suffered or is likely to suffer loss or hardship by reason of his liability to any client of his, or of the multi-national partnership of which he is or was a member, in consequence of some act or default of any of his partners or employees in circumstances where, but for the liability of that registered foreign lawyer, a grant might have been made out of the compensation fund to some other person¹³,

the Authority may make a grant out of the fund for the purpose of relieving that loss or hardship¹⁴.

As from a day to be appointed the following provisions have effect¹⁵. The Authority¹⁶ may make rules¹⁷ concerning the grant of compensation by the Authority in respect of loss that a person has suffered, or is likely to suffer, as a result of:

- 1217 (i) an act or omission of a registered foreign lawyer or former registered foreign lawyer¹⁸;

- 1218 (ii) an act or omission of an employee or former employee of a registered foreign lawyer or former registered foreign lawyer¹⁹;
 1219 (iii) the exercise by the Authority of any of its powers of intervention²⁰.

1 The Courts and Legal Services Act 1990 Sch 14 paras 6, 7 are substituted by the Legal Services Act 2007 Sch 16 paras 126, 132 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 Ie under the Courts and Legal Services Act 1990 s 89: see PARAS 628, 724-726.

3 As to the meaning of 'foreign lawyer' see PARA 628 note 2.

4 The Courts and Legal Services Act 1990 Sch 14 refers to the 'Council' (ie the Council of the Law Society) or the 'Society' (ie the Law Society): see Sch 14 para 1. However in practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

5 As to the compensation fund see PARA 862. In appropriate circumstances such contributions may be reduced or nil: see the Solicitors' Compensation Fund (Foreign Lawyers' Contributions) Rules 1991; and PARA 867. However this may mean that no grant may be made in relation to that lawyer: see the Solicitors' Compensation Fund Rules 1995 r 4.

6 Courts and Legal Services Act 1990 Sch 14 para 7(1).

7 Courts and Legal Services Act 1990 Sch 14 para 7(2)(a).

8 As to the meaning of 'multi-national partnership' see PARA 724 note 3.

9 As to the meaning of 'recognised body' see PARA 687 note 3.

10 Courts and Legal Services Act 1990 Sch 14 para 7(2)(b). The Authority may make rules providing, in circumstances specified by the rules, for a foreign lawyer to pay a reduced initial or annual contribution or special levy, or not to be required to pay such a contribution or levy: Sch 14 para 7(3). Any such rules must be made with the concurrence of the Master of the Rolls: Sch 14 para 7(4).

11 Courts and Legal Services Act 1990 Sch 14 para 6(1)(a). The Solicitors Act 1974 s 36 (see PARA 862) applies in relation to such grants: see the Courts and Legal Services Act 1990 Sch 14 para 6(2).

12 Courts and Legal Services Act 1990 Sch 14 para 6(1)(b).

13 Courts and Legal Services Act 1990 Sch 14 para 6(1)(c). There must be no other way of making good the loss: see the Solicitors' Compensation Fund Rules 1995 r 3.

14 Courts and Legal Services Act 1990 Sch 14 para 6(1).

15 The Solicitors Act 1974 s 36(1) is prospectively substituted by the Legal Services Act 2007 Sch 16 paras 1, 37 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

16 See note 4.

17 As to such rules see the Solicitors Act 1974 s 36; and PARA 863 (prospectively applied by the Courts and Legal Services Act 1990 Sch 14 para 6). Compensation rules may require contributions to be made to compensation funds and any amount so payable may be recovered as a debt due to the Authority: see the Solicitors Act 1974 s 36A(2), (3); and PARA 863 (prospectively applied by the Courts and Legal Services Act 1990 Sch 14 para 7).

18 Solicitors Act 1974 s 36(1)(a) (prospectively substituted (see note 15) and prospectively modified by the Courts and Legal Services Act 1990 Sch 14 para 6).

19 Solicitors Act 1974 s 36(1)(b) (prospectively substituted (see note 15) and prospectively modified (see note 18)).

20 Solicitors Act 1974 s 36(1)(c) (prospectively substituted (see note 15)). The power of intervention mentioned in the text refers to the Authority's powers under Sch 1 Pt 2 (see PARAS 890-894).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

868 Registered foreign lawyers

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTES 5, 13--Solicitors' Compensation Fund Rules 1995 rr 3, 4 replaced by Solicitors' Compensation Fund Rules 2009 rr 5, 6.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(vi) Compensation/869. Recognised bodies.

869. Recognised bodies.

Until a day to be appointed¹, a body corporate must pay to the Solicitors Regulation Authority² contributions to the compensation fund³ and, under certain circumstances, the Authority may make grants out of that fund⁴.

As from a day to be appointed⁵ the Authority may make rules⁶ concerning the grant of compensation by the Authority in relation to recognised bodies⁷.

1 The Administration of Justice Act 1985 Sch 2 para 6 is substituted by the Legal Services Act 2007 Sch 16 paras 80, 94 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Administration of Justice Act 1985 Sch 2 refers to the Council of the Law Society or the Law Society. However in practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619).

3 See the Administration of Justice Act 1985 Sch 2 para 6(1); and PARA 708. As to the compensation fund see PARA 862.

4 See the Administration of Justice Act 1985 Sch 2 para 6(2); and PARA 708.

5 The Solicitors Act 1974 s 36(1) and the Administration of Justice Act 1985 Sch 2 para 6 are prospectively substituted by the Legal Services Act 2007 Sch 16 paras 37, 94 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

6 As to such rules see the Solicitors Act 1974 s 36; and PARA 863 (prospectively applied by the Administration of Justice Act 1985 Sch 2 para 6(1)). Compensation rules may require contributions to be made to compensation funds and any amount so payable may be recovered as a debt due to the Authority: see the Solicitors Act 1974 s 36A(2), (3); and PARA 862 (prospectively applied by the Administration of Justice Act 1985 Sch 2 para 6(2)).

7 See the Solicitors Act 1974 s 36(1)(c); the Administration of Justice Act 1985 Sch 2 para 6 and PARA 708. The power of intervention mentioned in the text refers to the Authority's powers under Sch 1 Pt 2 (see PARAS 890-894).

UPDATE

862-869 Compensation

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(7) PROFESSIONAL CONDUCT, PRACTICE AND REDRESS/(vii) Non-statutory Concepts of Required Conduct/870. Unbefitting conduct etc before 1 July 2007.

(vii) Non-statutory Concepts of Required Conduct

870. Unbefitting conduct etc before 1 July 2007.

Prior to the introduction of the Solicitors' Code of Conduct 2007¹, where a complaint was made to the Solicitors Disciplinary Tribunal in respect of a solicitor it was customary to allege that the solicitor had been guilty of conduct unbefitting a solicitor². Non-statutory misconduct is now likely to be considered by the Tribunal only in relation to conduct before 1 July 2007³.

For the purpose of such misconduct the conduct of a solicitor must be judged by the rules and standards of his profession, and it must be shown that he has done something which would be reasonably regarded as disgraceful or dishonourable by solicitors of good repute and competency⁴. Conduct which would be regarded as improper according to the consensus of professional, including judicial, opinion could be fairly stigmatised as such whether it violated the letter of a professional code or not⁵. Misconduct is not limited to that which is inexcusable and condemned by others in the profession and consequently includes negligence⁶.

A solicitor who discharges his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed⁷; conduct occurring before admission as a solicitor is within the scope of the Tribunal's consideration⁸. Offences involving dishonesty⁹ will almost certainly result in a solicitor being struck off¹⁰. Conviction of an offence which renders a solicitor unfit to be a member of the profession substantiates an allegation of conduct unbefitting a solicitor¹¹.

Where dishonesty has not been proved, but the solicitor's conduct has fallen short of that required, striking off may still be appropriate¹².

¹ I.e. prior to 1 July 2007. As to the situation following the commencement of the Solicitors' Code of Conduct 2007 see in particular r 1; and PARA 831.

² As to the Solicitors Disciplinary Tribunal and disciplinary proceedings before the Tribunal see PARA 906 et seq.

³ I.e. the date the Solicitors' Code of Conduct 2007 came into force.

⁴ *Re A Solicitor, ex p the Law Society* [1912] 1 KB 302, DC, applying *Allinson v General Council of Medical Education and Registration* [1894] 1 QB 750 at 763, CA. Neglect may amount to professional misconduct, if it is inexcusable: *Re A Solicitor, ex p Law Society* [1972] 2 All ER 811 at 815, [1972] 1 WLR 869 at 873, CA, per Lord Denning MR. The fact that a solicitor is not practising is no answer, if his name is on the roll: *Re A Solicitor* (1905) 93 LT 838, CA.

⁵ See *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848.

⁶ *Re A Solicitor* [1972] 2 All ER 811 at 815, [1972] 1 WLR 869 at 873, CA, per Lord Denning MR. The standard to be applied in cases of negligence is governed by the same principles as are applicable to other professionals: see *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118, [1957] 1 WLR 582 per McNair J; and **NEGLIGENCE** vol 78 (2010) PARA 23.

⁷ The test of dishonesty to be applied is that laid down in *Twinsectra Ltd v Yardley* [2002] UKHL 12, [2002] 2 AC 164, [2002] 2 All ER 377: see *Bryant v Law Society* [2007] EWHC 3043 (Admin), [2008] NLJR 66, [2007] All ER (D) 379 (Dec). When considering dishonesty the evidence of good character is relevant: see *Donkin v Law Society* [2007] EWHC 414 (Admin), [2007] NLJR 402, [2007] All ER (D) 95 (Mar).

8 *Re A Solicitor (Ofosuhen)* (12 February 1997, unreported) (applying *Bolton v Law Society* [1994] 2 All ER 486, [1994] 1 WLR 512 (see note 9)).

9 See *Bolton v Law Society* [1994] 2 All ER 486 at 491, [1994] 1 WLR 512 at 518, CA, per Sir Thomas Bingham MR (only in a very unusual and venial case would an order less than one of suspension be considered; the orders may have a punitive element but are usually to ensure the offender does not have the opportunity to repeat the offence and to maintain the reputation of the profession).

10 See eg *Singleton v Law Society* [2005] EWHC 2915 (Admin), [2005] All ER (D) 152 (Nov) (solicitor made false entries in client accounts and charged clients £20 for disbursements that cost £10); *Ahmed v Law Society* [2006] EWHC 619 (Admin), [2006] All ER (D) 93 (Mar) (solicitor arranged for 'dressing up' of files to obtain a franchise); *Constantinides v Law Society* [2006] EWHC 725 (Admin), [2006] NLJR 680, [2006] All ER (D) 111 (Apr) (solicitor seeking to make a profit acted in conflict with the interests of his client and gave advice relating to a scheme of which he had no knowledge or competency to advise). However there may be a very small residual category of dishonesty where the striking off of a solicitor may not be appropriate: see *Salsbury v Law Society* [2008] EWHC 889 (Admin), [2008] All ER (D) 251 (Mar) (solicitor who was entitled to additional monies altered a cheque; he was convicted under the Theft Act 1968 s 15(A) and reported himself to the Law Society; significant personal mitigation; striking off held to be unnecessary and disproportionate).

11 See *Constantinides v Law Society* [2006] EWHC 725 (Admin), [2006] NLJR 680, [2006] All ER (D) 111 (Apr).

12 See *Singleton v Law Society* [2005] EWHC 2915 (Admin), [2005] All ER (D) 152 (Nov). See also Cordery on Solicitors (9th Edn) para J2217 et seq.

UPDATE

870 Unbefitting conduct etc before 1 July 2007

NOTE 1--Solicitors' Code of Conduct 2007 r 1 amended on 31 March 2009.

NOTE 10--*Salsbury*, cited, reversed: [2008] EWCA Civ 1285, [2009] 2 All ER 487 (solicitor guilty of serious dishonesty and normal consequence of being struck off would follow).

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(viii) Liability to Third Parties

871. In general.

The Solicitors' Code of Conduct 2007¹ provides a solicitor with a general obligation not to use his position to take unfair advantage of anyone either for his benefit or for that of another². It also draws together several obligations relating to the treatment of third parties as follows³.

Contacting any other party to a matter is generally prohibited and only permitted under certain limited circumstances⁴. A solicitor must fulfil an undertaking⁵ which is given in particular circumstances provided by the Code⁶. When negotiating costs payable by a third party or another firm's client, a solicitor is under an obligation to give sufficient time and information for the amount to be agreed and assessed⁷.

A solicitor may administer oaths or affirmations or take declarations but not when the solicitor or his firm is acting for any party in the matter⁸.

1 As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq.

2 See the Solicitors' Code of Conduct 2007 r 10.01.

3 See the Solicitors' Code of Conduct 2007 r 10 introduction.

4 See the Solicitors' Code of Conduct 2007 r 10.04. As to the limited circumstances see r 10.04(a)-(d).

5 For these purposes 'undertaking' means a statement made by the solicitors or his firm to someone who reasonably relies upon it, that the solicitor or his firm will do something or cause something to be done, or refrain from doing something: Solicitors' Code of Conduct 2007 r 24.01. The undertaking can be given orally or in writing and need not include the words 'undertake' or 'undertaking': r 24.01.

6 See the Solicitors' Code of Conduct 2007 r 10.05(1); and PARA 749.

7 See the Solicitors' Code of Conduct 2007 r 10.02.

8 See the Solicitors' Code of Conduct 2007 r 10.03. As to the power to take oaths see also the Solicitors Act 1974 s 81 (prospectively repealed); and PARA 736. See also PARA 577.

UPDATE

871 In general

TEXT AND NOTES 4, 6, 8--Solicitors' Code of Conduct 2007 r 10.03-10.05 amended on 31 March 2009.

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872. Contract races.

If a solicitor is instructed by a seller of land, other than in a sale by auction or tender, to deal with more than one prospective buyer the solicitor must immediately inform either the conveyancer of each prospective buyer or the prospective buyer if he is acting in person¹. The seller must agree to the disclosure and if he refuses to do so the solicitor must immediately stop acting in the matter². This also applies where to a solicitor's knowledge a seller of land, other than in a sale by auction or tender, deals directly with another prospective buyer (or their conveyancer) or instructs another conveyancer to deal with another prospective buyer³.

A solicitor must not act for both the seller and any of the prospective buyers⁴. Nor may a solicitor act for more than one of the prospective buyers⁵.

1 See the Solicitors' Code of Conduct 2007 r 10.06(1)(a). As to the Solicitors' Code of Conduct 2007 generally see PARA 830 et seq.

2 See the Solicitors' Code of Conduct 2007 r 10.06(1), (2).

3 See the Solicitors' Code of Conduct 2007 r 10.06(1)(b).

4 Solicitors' Code of Conduct 2007 r 10.06(3).

5 Solicitors' Code of Conduct 2007 r 10.06(4).

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873. Fees of lawyers of other jurisdictions.

A solicitor, who has in the course of business instructed a lawyer of another jurisdiction (who is not practising as a solicitor or barrister of England and Wales) must, as a matter of professional conduct, pay that lawyer's proper fees¹. However this does not apply if the solicitor has expressly disclaimed that responsibility², the lawyer is a registered European lawyer³ (or is registered with the Bar of England and Wales under the Establishment Directive⁴) or a registered foreign lawyer⁵ based in England and Wales and practising in a firm⁶.

A solicitor, who has in the course of practice instructed a business carrying on the practice of a lawyer of another jurisdiction, must, as a matter of professional conduct, pay the proper fees for the work that lawyer does⁷. However this does not apply if the solicitor has expressly disclaimed that responsibility⁸ or the business is a firm⁹.

1 See the Solicitors' Code of Conduct 2007 r 10.07(1).

2 See the Solicitors' Code of Conduct 2007 r 10.07(1)(a). The solicitor may either disclaim responsibility at the outset or at a later date he may expressly disclaim responsibility for any fees incurred after that date: see r 10.07(1)(a).

3 As to the meaning of 'registered European lawyer' see PARA 542 note 2.

4 I.e EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained.

5 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

6 See the Solicitors' Code of Conduct 2007 r 10.07(1)(b), (c).

7 See the Solicitors' Code of Conduct 2007 r 10.07(2).

8 See the Solicitors' Code of Conduct 2007 r 10.07(2)(a). The solicitor may either disclaim responsibility at the outset or at a later date he may expressly disclaim responsibility for any fees incurred after that date: see r 10.07(2)(a).

9 Solicitors' Code of Conduct 2007 r 10.07(2)(b).

UPDATE

873 Fees of lawyers of other jurisdictions

TEXT AND NOTES--Solicitors' Code of Conduct 2007 r 10.07 amended on 31 March 2009.

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874. Overseas practice.

The obligations placed on solicitors by the Solicitors' Code of Conduct 2007 in relation to third parties¹ also apply to an overseas practice². However the provisions relating to undertakings³ only apply to the extent that the solicitor has given such an undertaking⁴ and the provisions relating to conveyancing⁵ apply only if the land in question is situated in England and Wales⁶.

1 See the Solicitors' Code of Conduct 2007 r 10; and PARAS 871-873.

2 See the Solicitors' Code of Conduct 2007 r 15.10(1). 'Overseas practice' means the practice of a solicitor or a recognised body from an office or offices outside England and Wales and the practice of a registered European lawyer from an office or offices in Scotland or Northern Ireland: Solicitors' Code of Conduct 2007 r 24.01. 'Practice' means:

224 (1) the activities of a solicitor, in that capacity;

225 (2) the activities of a registered European lawyer in the capacity of lawyer of an Establishment Directive state, from an office or offices within the UK;

226 (3) the activities of a registered foreign lawyer from an office or offices in England and Wales as a partner in a multi-national partnership, a director of a recognised body which is a company or a member of a recognised body which is a limited liability partnership formed by being incorporated under the Limited Liability Partnerships Act 2000 (see **PARTNERSHIP** vol 79 (2008) PARA 234 et seq); and

227 (4) the activities of a recognised body,

and 'practise' and 'practising' are construed accordingly: Solicitors' Code of Conduct 2007 r 24.01. 'Overseas' means in or of a jurisdiction other than England and Wales: r 24.01.

'Establishment Directive state' means a state to which EC Council Directive 98/5 (OJ L77, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained, applies: Solicitors' Code of Conduct 2007 r 24.01. As to the meaning of 'registered European lawyer' see PARA 542 note 2. As to the meaning of 'registered foreign lawyer' see PARA 628 note 2. As to the meaning of 'multi-national partnership' see the Courts and Legal Services Act 1990 s 89(9); and PARA 724 note 3 (definition applied by the Solicitors' Code of Conduct 2007 r 24.01).

3 See the Solicitors' Code of Conduct 2007 r 10.05 (see PARA 871).

4 See the Solicitors' Code of Conduct 2007 r 15.10(2).

5 See the Solicitors' Code of Conduct 2007 r 10.06 (see PARA 872).

6 See the Solicitors' Code of Conduct 2007 r 15.10(3).

UPDATE

874 Overseas practice

TEXT AND NOTES--Solicitors' Code of Conduct 2007 rr 10, 15 and definition of 'overseas practice' in r 24.01 amended, definition of 'multi-national partnership' in r 24.01 repealed, on 31 March 2009.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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875. Liability in contract.

Except where the court intervenes under its summary jurisdiction, a solicitor's liability to third persons¹ for acts done by him in his professional capacity is determined in accordance with the ordinary principles applicable to cases of agency². Where he contracts ostensibly as a principal without disclosing the fact that he is acting for a client, as where he contracts in his own name to purchase property, he is personally liable³, and if he has purported to act as agent so as to bind a principal but in fact without authority, he will be liable for breach of warranty of authority⁴. If, on the other hand, he acts under the authority of his client and is known to the third person to be so acting⁵, he is not, as a general rule, personally liable in matters of contract, for example, to pay the charges of a photographer⁶, witnesses' expenses⁷ or sheriff's fees⁸. A solicitor is not bound by a promise to pay given without consideration⁹, but he may be liable by custom¹⁰, or make himself liable by special contract, whether express¹¹ or to be implied from the circumstances¹², as where he asks for a particular officer to be employed to levy execution¹³, or where the transaction is a cash transaction for which it is not contemplated that the client should be liable. In particular, he is personally liable to persons who are directly employed by him and to whom he occupies the position of a principal, for example another solicitor employed as his London¹⁴ or country¹⁵ agent, a shorthand writer engaged to take notes of a trial¹⁶, or a law stationer¹⁷. He is under no legal liability to pay the fees of counsel employed by him¹⁸, and the court does not, under its summary jurisdiction, order him to do so¹⁹.

1 Liability to third persons considered here is confined to liability in contract or in tort. For the definition of what may be described as the interface between the two concepts see the judgment in *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL; and see PARA 876 note 8.

As to a solicitor's liabilities as an officer of the court see PARA 745 et seq, and as to disciplinary jurisdiction and procedure see PARA 907 et seq. As to a solicitor's liability for his partner's acts see PARA 825, and as to a solicitor's liability to his client see PARA 814 et seq. Where a solicitor acts as bailee, his position is no different from that of any other person so acting: see generally **BAILMENT**.

2 See **AGENCY** vol 1 (2008) PARA 121 et seq.

3 *Saxon v Blake* (1861) 29 Beav 438. Contrast *Clark v Lord Rivers* (1867) LR 5 Eq 91.

4 *Yonge v Toynbee* [1910] 1 KB 215, CA; see PARAS 795-796.

5 Where a solicitor acts on behalf of a client, prima facie he acts as agent: *Wakefield v Duckworth & Co* [1915] 1 KB 218 at 220, CA. Mere notice of a claim asserted by a third person is insufficient to render the solicitor guilty of a wrongful act in dealing with property derived from his principal, in accordance with the principal's instructions, unless the solicitor knows that the claim of the third person is well founded and that the principal has no authority to give such instructions: *Carl Zeiss Stiftung v Herbert Smith & Co (No 2)* [1969] 2 Ch 276 at 304, [1969] 2 All ER 367 at 384, CA.

6 *Wakefield v Duckworth & Co* [1915] 1 KB 218, CA.

7 *Robins v Bridge* (1837) 3 M & W 114; *Lee v Everest* (1857) 2 H & N 285; *Simmons v Liberal Opinion Ltd, Re Dunn* [1911] 1 KB 966, CA. See further **CIVIL PROCEDURE** vol 11 (2009) PARA 1015.

8 *Maybery v Mansfield* (1846) 9 QB 754; *Seal v Hudson* (1847) 4 Dow & L 760; *Cole v Terry* (1861) 5 LT 347; *Royle v Busby* (1880) 6 QBD 171, CA.

9 *Bates v Sturges* (1832) 2 Moo & S 172.

10 *Wakefield v Duckworth & Co* [1915] 1 KB 218 at 220, CA. Cf **CUSTOM AND USAGE** vol 12(1) (Reissue) PARA 689.

11 *Ormerod v Foscett* (1796) Peake Add Cas 77; *Hallet v Mears* (1810) 13 East 15; *Evans v Phillpotts* (1840) 9 C & P 270.

12 *Fendall v Noakes* (1839) 3 Jur 726.

13 *Foster v Blakelock* (1826) 5 B & C 328; *Newton v Chambers* (1844) 8 Jur 244; *Walbank v Quarterman* (1846) 3 CB 94; *Maile v Mann* (1848) 2 Exch 608.

14 *Waller v Holmes* (1860) 1 John & H 239.

15 *Scrace v Whittington* (1823) 3 Dow & Ry KB 195. There is no custom with regard to the employment of an Irish solicitor by an English one (*Hyndman v Ward* (1899) 15 TLR 182, DC), although the English solicitor may lawfully be liable on an express contract, for example one to be found in correspondence (*Porter v Kirtlan* [1917] 2 IR 138 (Ir CA)).

16 *Cocks v Bruce, Searl and Good* (1904) 21 TLR 62.

17 *Ex p Hartop* (1806) 12 Ves 349 at 352.

18 See PARA 1297. Where a solicitor on instructions has briefed counsel and has paid his fees against the client's instructions, the solicitor may recover them from the client: *Medlicott v Emery* (1933) 149 LT 303.

19 *Re Angell, Angell v Oodeen* (1860) 6 Jur NS 1373.

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876. Liability in tort.

A solicitor is personally liable in tort¹ where from his conduct it is clear that he has made himself a party to the tort². A solicitor acting for a client disposing of property or any interest in property for money or money's worth to a purchaser³ is liable to an action for damages by the purchaser or persons deriving title under him for any loss sustained by reason of:

- 1220 (1) the concealment of any instrument or incumbrance⁴ material to the title⁵;
or
- 1221 (2) any claim made by a person under a pedigree on which the title depends and which was falsified in order to induce the purchaser to accept the title⁶.

The client also is liable in similar circumstances⁷.

A solicitor instructed by a client to carry out a transaction to confer a benefit on an identified third person owes a duty to that person to use proper care in carrying out the instructions, and if a breach of that duty causes loss, even purely financial loss, to the third person the solicitor will be liable in negligence to him⁸. This is particularly significant in relation to the advice given by a solicitor at the request of a bank or other lender where the lender has requested that the solicitor gives independent advice as to the loan. The bank can assume that the solicitor in these circumstances has acted properly in giving the advice and need not inquire as to the details of the advice which has been given⁹. Even where there exists a conflict of interest between the solicitor's client and the other party to the transaction a duty of care may arise¹⁰.

Where a house is jointly owned and a solicitor fails to ensure that he has the authority of both parties to act in its sale, he is liable in negligence both to the party who has not in fact instructed him and to the mortgagee¹¹.

1 See generally **AGENCY** vol 1 (2008) PARAS 164-166; and **TORT** vol 97 (2010) PARA 401 et seq. For examples see *Barker v Braham and Norwood* (1773) 2 Wm Bl 866 (false imprisonment); *Pasley v Freeman* (1789) 3 Term Rep 51 (fraud); *Sowell v Champion* (1837) 6 Ad & El 407 (trespass); *Rundle v Little* (1844) 6 QB 174 (trespass); *Symonds v Atkinson* (1856) 1 H & N 146 (conversion); *Williams v Smith* (1863) 14 CBNS 596 (false imprisonment); *Johnson v Emerson and Sparrow* (1871) LR 6 Exch 329 (malicious prosecution); *Phosphate Sewage Co v Hartmont* (1877) 5 Ch D 394, CA (fraud); *Bagnall v Carlton* (1877) 6 Ch D 371, CA (fraud); *Bellairs v Tucker* (1884) 13 QBD 562 (fraud); *Lloyd v Grace Smith & Co* [1912] AC 716, HL (fraud of clerk). As to a solicitor's liability for his partner's acts see PARA 825. As to his liability as a constructive trustee see **TRUSTS** vol 48 (2007 Reissue) PARAS 687 et seq, 1086.

2 See **AGENCY** vol 1 (2008) PARAS 164-166.

3 'Purchaser' means a purchaser in good faith for valuable consideration, and includes a lessee, mortgagee or other person acquiring an interest in property for valuable consideration: see the Law of Property Act 1925 s 205(1)(xxi); and **SALE OF LAND** vol 42 (Reissue) PARA 55.

4 It seems that this does not apply to incumbrances which are prior to the commencement of title and would not appear on an abstract: *Smith v Robinson* (1879) 13 ChD 148.

5 See the Law of Property Act 1925 s 183(2)(a); and **SALE OF LAND** vol 42 (Reissue) PARA 149. See also note 6.

6 See the Law of Property Act 1925 s 183(2)(b); and **SALE OF LAND** vol 42 (Reissue) PARA 149. The concealment or falsification must be with intent to defraud, which should be pleaded: *District Bank Ltd v Luigi Grill Ltd* [1943] Ch 78, [1943] 1 All ER 136 per Lord Clauson. In estimating damages, where the property is recovered from the purchaser or those deriving title under him, expenditure by him or them on improvements

must be taken into consideration: see the Law of Property Act 1925 s 183(3); and **SALE OF LAND** vol 42 (Reissue) PARA 56. The act constituting the cause of action may also be an offence: see s 183(1); and PARA 877.

7 See the Law of Property Act 1925 s 183(2); and **SALE OF LAND** vol 42 (Reissue) PARA 56.

8 *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580. See, however, *Clarke v Bruce Lance & Co (a firm)* [1988] 1 All ER 364, [1988] 1 WLR 881, CA (solicitor not liable to beneficiary under will when acting for testator in transaction adversely affecting value of beneficiary's interest). A solicitor may owe a duty of care to his client's opponent if he accepts wider than normal responsibilities: see *Al-Kandari v J R Brown & Co (a firm)* [1988] QB 665, [1988] 1 All ER 833, CA (applying *Ross v Caunters*); and see *Mortgage Express Ltd v Bowerman & Partners (a firm)* 1996] 2 All ER 836, CA (failure to inform a mortgagee of material information; liable for a breach of a duty of care and therefore in negligence). See also *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL (instructions to draw up a will conferring a benefit on two identified beneficiaries. The solicitor failed to draw up the will and the testator died before the will was prepared or executed. The solicitor owed a duty of care to the intended beneficiaries; *Ross v Caunters* applied but by an extension of the principles of the assumption of responsibility referred to in *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575, HL). The remedy as extended to a disappointed beneficiary in *White v Jones* is not confined to cases where the estate has no remedy: *Carr-Glynn v Frearsons (a firm)* [1999] Ch 326, [1998] 4 All ER 225, CA (property left under will held on joint tenancy; solicitor owed a duty to ensure that testatrix's interest in property could pass to her under the will and by failing to advise that a notice of severance be served immediately fell below standard of care). The duty imposed by *White v Jones* also applies to lay will-writers (*Esterhuizen v Allied Dunbar Assurance plc* [1998] 2 FLR 668) and an insurance company (*Gorham v British Telecommunications plc* [2000] 4 All ER 867, [2000] 1 WLR 2129, CA). See also *Hooper v Fynmores (a firm)* [2002] Lloyd's Rep PN 18, [2001] All ER (D) 298 (May) (cancellation of appointment on part of solicitor which results in failure to execute new will giving rise to liability to intended beneficiary); and *Hunblestone v Marting Tolhurst Partnership (a firm)* [2004] EWHC 151 (Ch), (2004) 6 ITELR 900 (solicitor's failure to check proper execution of will gave rise to liability to intended beneficiary). Where solicitors have failed to include a specific devise in a will, the disappointed beneficiary must bring rectification proceedings and exhaust that remedy before suing for negligence (*Walker v Geo H Medlicott & Son (a firm)* [1999] 1 All ER 685, [1999] 1 WLR 727, CA) unless the rectification proceedings are unlikely to result in material recovery of funds (*Horsfall v Haywards (a firm)* [1999] 1 FLR 1182, [1999] Fam Law 383, CA). A solicitor is not liable to beneficiaries under a will for costs incurred by them in proceedings undertaken to obtain the refusal of probate of a later will which excluded them: *Worby v Rosser* (1999) Times, 9 June, CA. See also *Gibbons v Nelsons* (2000) Times, 21 April (solicitor's duty of care did not extend to a beneficiary of whom he was unaware). The duties owed by a solicitor in contract to a testator and in tort to a beneficiary are complementary: *Corbett v Bond Pearce (a firm)* [2001] EWCA Civ 531, [2001] 3 All ER 770. Where solicitors instructed by the executor have failed to progress the administration of the estate, and, as a result, properties forming part of the estate remain unlet during the administration, the executor has a cause of action in his own right: *Chappell v Somers & Blake (a firm)* [2003] EWHC 1644 (Ch), [2004] Ch 19, [2003] 3 All ER 1076.

9 See *Bank of Baroda v Rayarel* [1995] 2 FCR 631, [1995] 2 FLR 376, CA. As to the issue of quantum as to damages for loss see *Target Holdings Ltd v Redferns (a firm)* [1996] AC 421, [1995] 3 All ER 785, HL.

10 See *Dean v Allin & Watts* [2001] EWCA Civ 758, [2001] 2 Lloyd's Rep 249, 145 Sol Jo LB 157.

11 See eg *Penn v Bristol & West Building Society* [1996] 2 FCR 729, [1995] 1 FLR 938; and *Brill & Co v Penn* (1997) 74 P & CR 210, CA.

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877. Criminal liability.

A solicitor, like any other person entrusted with or having received property as agent for or on account of another person, may be criminally liable for theft¹, for obtaining property by deception or a pecuniary advantage by deception², for false accounting or suppression of documents³, or for handling stolen goods⁴.

A solicitor who is liable in damages, by statutory provision⁵, for concealing or falsifying matters of title to property to induce a purchaser to accept the title offered also commits an offence⁶.

1 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 282 et seq.

2 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 309-312.

3 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARAS 316-317.

4 See **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 302 et seq.

5 See PARA 876 text and notes 3-6.

6 See the Law of Property Act 1925 s 183(1); **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) PARA 318; and **SALE OF LAND** vol 42 (Reissue) PARA 149.

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878. Criminal and civil responsibility as officer of a company, etc.

A solicitor does not become an officer¹ of a company merely by being appointed solicitor to the company² although he will be such an officer if he is employed by the company at a salary on such terms as render him no longer an independent practitioner but the holder of an office under the company³. Accordingly a solicitor will not normally be liable as an officer⁴ of a company under the statutory provisions relating to malpractice before and during the liquidation of a company⁵.

A solicitor will not incur responsibility for a company's fraudulent trading merely because he has carried into effect lawful directions of the directors without having cause for suspicion⁶, although he will be criminally liable, and may also be made civilly responsible, if he was knowingly a party to the fraudulent trading⁷.

¹ 'Officer' in relation to a body corporate, includes a director, manager or secretary: Companies Act 1985 s 744.

² *Re Liberator Permanent Benefit Building Society* (1894) 71 LT 406 at 407-408, DC; *Re Harper's Ticket Issuing and Recording Machine Ltd* (1912) 29 TLR 63; and see generally **COMPANIES** vol 14 (2009) PARA 611.

³ *Re Liberator Permanent Benefit Building Society* (1894) 71 LT 406, DC. Cf *R v Shacter* [1960] 2 QB 252 at 256, [1960] 1 All ER 61 at 63, CCA (auditor).

⁴ For the purposes of the Insolvency Act 1986 s 206 (fraud etc in anticipation of winding up), s 208 (misconduct in course of winding up), s 210 (material omissions from statement relating to company's affairs) and s 211 (false representations to creditors), 'officer' includes a shadow director (see ss 206(3), 208(3), 210(3), 211(2)); and 'shadow director' in relation to a company means a person in accordance with whose directions or instructions the directors of the company are accustomed to act, but so that a person is not deemed a shadow director by reason only that the directors act on advice given by him in a professional capacity (s 251).

⁵ See the Insolvency Act 1986 Pt IV Ch X (ss 206-219); and see further **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 905 et seq.

⁶ *Re Great Wheal Polgooth Co Ltd* (1883) 49 LT 20 at 24.

⁷ See the Insolvency Act 1986 ss 213, 218(1); and **COMPANY AND PARTNERSHIP INSOLVENCY**. The liability to make contributions under s 213(2) applies to any person who was knowingly a party to the fraudulent trading, so that a solicitor would not escape liability because he was acting in a professional capacity: see s 213(2).

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879. Personal liability of solicitor for costs; in general.

The Supreme Court has inherent jurisdiction over solicitors and may make appropriate orders in respect of costs against a solicitor personally¹. In any proceedings in any county court, the High Court and the Civil Division of the Court of Appeal² the court may disallow, or order the legal or other representative³ concerned to meet the whole of any wasted costs⁴ or such a part of them as may be determined in accordance with rules of court⁵. A solicitor may thus be liable to pay costs as an officer of the court under the inherent jurisdiction of the court, or under the statutory jurisdiction. Where the legislature has stepped in with legislation in a particular area then within that particular area the existing, inherent jurisdiction is ousted or curtailed, at any rate so far as the particular legislation is negative in character⁶.

1 See further PARA 880 et seq. As to the risk to legal representatives acting under a conditional fee agreement see *Hodgson v Imperial Tobacco Ltd* [1998] 2 All ER 673, [1998] 1 WLR 1056, CA; and PARA 953. The onus of proving liability for wasted costs is on the party making the application: see *Stein v Blake* [2000] All ER (D) 1507 (solicitor's responsibility to inform opposite party of embargo placed on client's legal aid).

2 Supreme Court Act 1981 s 51(1) (s 51 substituted by the Courts and Legal Services Act 1990 s 4(1)). Similarly in any criminal proceedings in the Court of Appeal, the Crown Court or a magistrates' court parallel provisions apply: see the Prosecution of Offences Act 1985 s 19A; and PARA 882. As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

3 For these purposes, 'legal or other representative', in relation to a party to proceedings, means any person exercising a right of audience or right to conduct litigation on his behalf: Supreme Court Act 1981 s 51(13) (as substituted: see note 2); Prosecution of Offences Act 1985 s 19A (added by the Courts and Legal Services Act 1990 s 111). As to rights of audience and rights to conduct litigation see PARA 495 et seq. The Supreme Court Act 1981 is prospectively renamed: see note 2.

4 'Wasted costs' means any costs incurred by a party (1) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such representative; or (2) which in the light of any such act or omission occurring after they were incurred, the court considers it unreasonable to expect that party to pay: Supreme Court Act 1981 s 51(7) (as substituted: see note 2); Prosecution of Offences Act 1985 s 19A (as added: see note 3). The Supreme Court Act 1981 is prospectively renamed: see note 2.

5 Supreme Court Act 1981 s 51(6) (as substituted: see note 2). The Supreme Court Act 1981 is prospectively renamed: see note 2. See *Turner Page Music v Torres Design Associates Ltd* (1998) Times, 3 August, CA; and PARA 881.

6 See *Shiloh Spinners Ltd v Harding* [1973] AC 691, [1973] 1 All ER 90, HL; *Shiloh Spinners Ltd v Harding* (No 2) [1973] 1 All ER 966, [1973] 1 WLR 518, HL; *Harrison v Tew* [1989] QB 307, [1987] 3 All ER 865, CA; affd [1990] 2 AC 523, [1990] 1 All ER 321, HL (where the Court of Appeal confirmed that where payments of solicitors' accounts were made more than 12 months before the application for assessment, the Solicitors Act 1974 s 70(4) (see PARA 971) prohibited an order for taxation (now assessment) but the question arose whether the court could nonetheless order assessment under its inherent jurisdiction. The majority of the court found that it had no jurisdiction. They held that the court was not bereft of all power to inquire (by disciplinary proceedings or an action by the client against the solicitor) into the question whether the solicitor had been guilty of serious misconduct or gross over-charging or fraud, but the court felt that the inquiry could not be by means of an application for taxation (now assessment) under s 70).

UPDATE

879 Personal liability of solicitor for costs; in general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604.

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880. Inherent jurisdiction.

The inherent jurisdiction in civil and criminal proceedings appears to have developed along separate lines¹.

In criminal cases the conduct giving rise to the inherent jurisdiction is 'any conduct of a solicitor which involves a serious dereliction on the part of the solicitor of his duty to the court'².

The object of the jurisdiction is primarily to reimburse a litigant for costs incurred because of a solicitor's fault³. The costs which a solicitor would have to pay from his own pocket would be those and only those which his default had caused. Nothing is added to the figure to mark the disapproval of the court or by way of deterrence⁴.

However the Court of Appeal has found that there is also a punitive element⁵ since the solicitor has to pay a bill which would otherwise have to be met by one of the parties to the litigation. There is also necessarily an element of deterrence in that solicitors would wish to avoid the expense and adverse publicity that the exercise of the court's discretion entails.

1 See *Holden & Co (a firm) v Crown Prosecution Service* [1990] 2 QB 261, [1990] 1 All ER 368, CA; *Steele Ford & Newton v Crown Prosecution Service (No 2)* [1994] 1 AC 22, [1993] 2 All ER 769, HL (criminal proceedings); *Gupta v Comer* [1991] 1 QB 629, [1991] 1 All ER 289, CA (civil proceedings).

2 *Holden & Co (a firm) v Crown Prosecution Service* [1990] 2 QB 261, [1990] 1 All ER 368, CA, approving *Myers v Elman* [1940] AC 282, [1939] 4 All ER 484, HL. This decision took into account the dictum of Lord Denning MR in *R & T Thew Ltd v Reeves (No 2)* [1982] QB 1283n at 1286n, [1982] 3 All ER 1086 at 1089, CA: 'The cases show that (the jurisdiction) is not available in cases of mistake, error of judgment or mere negligence. It is only available where the conduct of the solicitor is inexcusable and such as to merit reproof'. It is evident from later civil decisions, eg *Gupta v Comer* [1991] 1 QB 629, [1991] 1 All ER 289, CA, that the preferred test is one of mere negligence.

3 See *Weston v Central Criminal Court Courts Administrator* [1977] QB 32 at 45, [1976] 2 All ER 875 at 883, CA, per Stephenson LJ. It should be noted that the inherent jurisdiction does not extend to counsel, who are not officers of the Supreme Court.

4 See *Weston v Central Criminal Court Courts Administrator* [1977] QB 32, [1976] 2 All ER 875; *Holden & Co (a firm) v Crown Prosecution Service* [1990] 2 QB 261, [1990] 1 All ER 368, CA.

5 Following *Currie & Co v The Law Society* [1977] QB 990 at 997, [1976] 3 All ER 832 at 839, per May J.

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881. Statutory jurisdiction.

In any proceedings in the Civil Division of the Court of Appeal, the High Court and any county court¹ and in any criminal proceedings in the Court of Appeal, the Crown Court or a magistrates' court², the court may disallow or order the legal or other representative³ to meet the whole of any wasted costs⁴ or such part of them as may be determined in accordance with rules of court⁵ or regulations made by the Lord Chancellor⁶.

1 See the Supreme Court Act 1981 s 51(1) (substituted by the Courts and Legal Services Act 1990 s 4(1)). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

2 See the Prosecution of Offences Act 1985 s 19A(1) (added by the Courts and Legal Services Act 1990 s 111).

3 As to the meaning of 'legal or other representative' see PARA 879 note 3.

4 As to the meaning of 'wasted costs' see PARA 879 note 4. An application for a wasted costs order is a summary procedure, which ought only to be used in simple and obvious cases, and which will generally be inappropriate for actions involving dishonesty, or breach of a solicitor's professional duty, where it is necessary to make detailed investigations of fact, resulting in complex proceedings: *Turner Page Music v Torres Design Associates Ltd* (1998) Times, 3 August, CA.

5 See the Supreme Court Act 1981 s 51(6) (substituted by the Courts and Legal Services Act 1990 s 4(1)). The Supreme Court Act 1981 is prospectively renamed: see note 3.

6 Prosecution of Offences Act 1985 s 19A(1), (3) (added by the Courts and Legal Services Act 1990 s 111). The regulations may provide that a legal or other representative against whom action is so taken by a magistrates' court may appeal to the Crown Court and that a legal or other representative against whom action is so taken by the Crown Court may appeal to the Court of Appeal: Prosecution of Offences Act 1985 s 19A(2) (as so added). In exercise of the power so conferred, the Lord Chancellor has made the Costs in Criminal Cases (General) (Amendment) Regulations 1991, SI 1991/789, and the Costs in Criminal Cases (General) (Amendment) Regulations 2004, SI 2004/2408.

UPDATE

881 Statutory jurisdiction

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

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882. Wasted costs orders in criminal proceedings.

A wasted costs order in specified criminal proceedings¹ may provide for the whole or any part of the wasted costs² to be disallowed or ordered to be paid and the court must specify the amount of such costs³. Before making a wasted costs order the court must allow the legal or other representative⁴ and any party to the proceedings to make representations⁵. When making such an order, the court may take into account any other order as to costs in respect of the proceedings and may take the wasted costs order into account when making any other such order⁶. Where a wasted costs order has been made, the court must notify any interested party⁷.

A legal or other representative against whom the wasted costs order is made may appeal to the Crown Court, in the case of an order made by a magistrates' court, and to the Court of Appeal, in the case of an order made at first instance by the Crown Court⁸. On such an appeal the court may affirm, revoke or vary the order as it thinks fit and must notify its decision to the appellant, any interested party and the court which made the order⁹.

Where the person required to make a payment in respect of sums due under a wasted costs order fails to do so, the payment may be recovered summarily as a sum adjudged to be paid as a civil debt by order of a magistrates' court¹⁰.

1 'Wasted costs order' means any action taken by a court under the Prosecution of Offences Act 1985 s 19A (see PARA 881); Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3A (added by SI 1991/789).

2 As to the meaning of 'wasted costs' see PARA 879 note 4.

3 Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3B(1) (added by SI 1991/789).

4 As to the meaning of 'legal or other representative' see PARA 879 note 3.

5 Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3B(2) (added by SI 1991/789). The court may take into account the impact of a wasted costs order on a legal representative when deciding whether it should be made: *R (on the application of Hide) v Staffordshire County Council* [2007] EWHC 2441 (Admin), [2007] NLJR 1543, [2007] All ER (D) 402 (Oct). See *Re Hickman & Rose (Solicitors) (Wasted Costs Order) (No 10 of 1999)* (2000) Times, 3 May, CA (wasted costs order against firm of solicitors inappropriate where it had merely acted on counsel's advice); *Morris v Roberts (Inspector of Taxes)* [2005] EWHC 1040 (Ch), [2006] STC 135 (wasted costs order appropriate where proceedings brought to delay payment of tax); and *Re Boodhoo (Wasted Costs Order)* [2007] EWCA Crim 14, [2007] 4 All ER 762n, [2007] All ER (D) 219 (Jan) (wasted costs order inappropriate where accused had deliberately absented himself from trial).

6 Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3B(3) (added by SI 1991/789; and amended by SI 2004/2408).

7 See the Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3B(4) (added by SI 1991/789). 'Interested party' means the party benefiting from the wasted costs order and, where he was receiving services funded for him as part of the Criminal Defence Service, or an order for the payment of costs out of central funds was made in his favour, includes the authority responsible for determining costs payable in respect of work done under the representation order or out of central funds as the case may be: Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3A (added by SI 1991/789; and amended by SI 2004/2408).

8 Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3C(1) (added by SI 1991/789). The appeal must be instituted within 21 days of the order being made, by notice in writing to the court which made the order stating the grounds of appeal: see reg 3C(2) (as so added). This time limit may be extended: see reg

3C(4) (as so added). A copy of the notice of appeal and grounds, including any application for extension of time, must be served on any interested party: see reg 3C(3) (as so added). The court must give notice of the hearing date of the appeal to the appellant, the court which made the wasted costs order and any interested party and must allow the interested party to make representations, either orally or in writing: reg 3C(5) (as so added).

9 Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3C(6) (added by SI 1991/789).

10 Costs in Criminal Cases (General) Regulations 1986, SI 1986/1335, reg 3D (added by SI 1991/789). The sum may be recovered by the party benefiting from the order, except where he was receiving services funded for him as part of the Criminal Defence Service or an order for the payment of costs was made in his favour, in which case the power to recover is exercisable by the Lord Chancellor: reg 3D (as so added). As to costs in criminal cases see further **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2058 et seq.

UPDATE

882 Wasted costs orders in criminal proceedings

TEXT AND NOTES 5, 7--SI 1986/1335 reg 3B(2), (4) omitted: SI 2009/2720.

NOTE 8--SI 1986/1335 reg 3C(2)-(5) omitted: SI 2009/2720.

TEXT AND NOTE 9--SI 1986/1335 reg 3C(6) amended: SI 2009/2720.

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883. Personal liability of legal representative for costs in civil proceedings.

When the court makes a wasted costs order, it must specify the amount to be disallowed or paid or direct a costs judge or a district judge to decide the amount of costs to be disallowed or paid¹. The court may direct that notice must be given to the legal representative's client, in such manner as the court may direct of any proceedings under this rule or of any order made under it against his legal representative². Before making a wasted costs order, the court may direct a costs judge or a district judge to inquire into the matter and report to the court³. The court may refer the question of wasted costs to a costs judge or a district judge, instead of making a wasted costs order⁴.

When a wasted costs order is contemplated a three-stage test should be applied. The first question is whether the legal representative of whom complaint was made had acted improperly, unreasonably or negligently. If he had so acted, it must then be considered whether that conduct caused the applicant to incur unnecessary costs; and finally, if unnecessary costs were so incurred, it must be decided whether in all the circumstances it is just to order the legal representative to compensate the applicant for the whole or part of those costs⁵. Demonstration of the causal link between improper, unreasonable or negligent conduct and the waste of costs is thus essential. Where such conduct is proved but no waste of costs is shown to have resulted, the case may be referred to the appropriate disciplinary body⁶ or the legal aid authorities; it is not a matter for the exercise of the wasted costs jurisdiction⁷. In general, wasted costs applications are best left until after the end of the trial⁸. Although the court might initiate the inquiry it should be slow to do so except in the most obvious case; it is normally for an aggrieved party to make an application, so that costs would then follow the event in the normal way between the parties⁹. Although no order should be made without giving the legal representative an opportunity to show cause why an order should not be made that does not mean that the burden is on the legal representative to exculpate himself¹⁰.

The jurisdiction to make a wasted costs order depends at two stages on the court's discretion: at the stage of initial application when the court is invited to give the legal representative an opportunity to show cause¹¹ and at the final stage when, even if the court is satisfied that the legal representative has acted improperly, unreasonably or negligently so as to waste costs it is not bound to make an order but must give sustainable reasons for the exercise of its discretion in that way¹².

1 CPR 48.7(4). The following applies where the court is considering whether to make an order under the Supreme Court Act 1981 s 51(6) (court's power to disallow or (as the case may be) order a legal representative to meet, wasted costs) (see PARA 881): CPR 48.7(1). The court must give the legal representative a reasonable opportunity to attend a hearing to give reasons why it should not make such an order: CPR 48.7(2).

2 CPR 48.7(5).

3 CPR 48.7(6).

4 CPR 48.7(7).

5 *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA. 'Improper' covers, but is not confined to, conduct which would ordinarily be held to justify striking off, suspension from practice or other serious professional penalty; 'unreasonable' describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case and it makes no difference that the conduct is the product of

excessive zeal and not improper motive; 'negligence' should be understood in an untechnical way to denote failure to act with the competence reasonably expected of ordinary members of the profession: *Ridehalgh v Horsefield*. On an application for wasted costs it is not necessary to prove under the negligence head negligence in the sense necessary in an action for negligence: see *Saif Ali v Sydney Mitchell & Co* [1980] AC 198 at 218, 220, [1978] 3 All ER 1033 at 1041, 1043, HL. A legal representative is not to be held to have acted improperly or unreasonably or negligently simply because he acted for a party who pursued a claim or defence which was plainly doomed to fail. There is a distinction between this and an abuse of the process; and if there is a doubt the legal representative is entitled to the benefit of it. In legally aided cases the court must bear in mind the peculiar vulnerability of legal representatives: see *Symphony Group Plc v Hodgson* [1994] QB 179 at 194, [1993] 4 All ER 143 at 154, CA. The legal representative acting as an advocate is immune from action for negligence at the suit of the client in respect of his conduct and management of the case in court and the pre-trial work immediately connected with it (see PARA 876); but if an advocate's conduct in court is improper, unreasonable or negligent he will be liable to a wasted costs order. The judge must make full allowance for the fact that an advocate in court often has to make decisions quickly and under pressure; it is only when, with all allowances made, an advocate's conduct of court proceedings is quite plainly unjustifiable that it is appropriate to make a wasted costs order against him: see *Ridehalgh v Horsefield*. See also *Count Tolstoy-Miloslavsky v Lord Aldington* [1996] 2 All ER 556, [1996] 1 WLR 736, CA (solicitor acting without a fee in a hopeless case did not justify the making of a wasted costs order).

6 As to the Solicitors Disciplinary Tribunal see PARA 906.

7 *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA. A solicitor does not abdicate his professional responsibility when he seeks the advice of counsel; he must apply his mind to the advice received. The more specialist the nature of the advice, the more reasonable it is likely to be for him to accept it: *Locke v Camberwell Health Authority* [1991] 2 Med LR 249, [1990] NLJR 205.

8 *Fimlab Systems International Ltd v Pennington* [1994] 4 All ER 673, [1995] 1 WLR 673; approved in *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA.

9 *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA. The procedure to be followed is to be laid down by the court so as to meet the requirements of the individual case before it. The over-riding requirements are that any procedure is to be fair and simple and as summary as fairness permits. The respondent lawyer must be very clearly told what he is said to have done wrong and what is claimed: *Ridehalgh v Horsefield*.

10 *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA. An order should not be made unless the applicant satisfies the court that it should be. The relevant rule clearly envisages that the legal representative should not be called on to reply unless an apparently strong prima facie case has been made against him: *Ridehalgh v Horsefield*.

11 This is not something to be done automatically; the costs of the inquiries compared with the costs claimed will always be a relevant consideration. The discretion, like any other, is to be exercised judicially; but judges might not infrequently decide that further proceedings were not likely to be justified: *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA.

12 *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA. The court has a general power to order costs against a legal representative personally under the Supreme Court Act 1981 s 51(3) even against someone not representing a party to the proceedings if that legal representative has acted improperly and unreasonably: *Kleinwort Benson v De Montenegro* [1994] NPC 46 per Aldous J.

UPDATE

883 Personal liability of legal representative for costs in civil proceedings

NOTES 1, 12--Supreme Court Act 1981 now cited as Senior Courts Act 1981; Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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884. Liability to client.

A solicitor may be ordered to indemnify his client against costs where he defends an action to which, to his knowledge, there is no defence¹; where he appeals in his own interest and not on behalf of his client²; where he improperly continues proceedings after his client becomes mentally disordered³; and where he fails to secure the correction of an error in a court order⁴. Where a solicitor institutes, defends⁵ or continues⁶ proceedings without authority he may be ordered to indemnify his alleged client against costs, that is to pay the costs of his alleged client⁷ and to pay also the costs of the other side⁸.

1 *Wilkins v Greer* (1884) 28 Sol Jo 535; and see *Thomas v Vandermoolen* (1818) 2 B & Ald 197; *Bones v Punter* (1819) 2 B & Ald 777; *Aubrey v Aspinall* (1822) Jac 441.

2 *Harbin v Masterman* [1896] 1 Ch 351, CA; *Hirst and Capes v Fox* [1908] AC 416, HL. Where the solicitor is really fighting the litigation in his own interests he may be ordered to pay the costs: *Cockle v Whiting* (1829) 1 Russ & M 43; *Re Jones* (1870) 6 Ch App 497; *Scott v Hitchcock* (1904) 20 TLR 759.

3 *Hartley v Gilbert* (1843) 13 Sim 596; *Beall v Smith* (1873) 9 Ch App 85. It is otherwise where he believes his client to be of sound mind: *Re George Armstrong & Sons* [1896] 1 Ch 536. There is therefore a distinction where the solicitor is acting honestly and where he will not be ordered to pay costs on the ground of misconduct although he may be liable on a breach of warranty of authority (see *Yonge v Toynbee* [1910] 1 KB 215, CA) and where a solicitor is guilty of misconduct and may be ordered to pay costs on that ground rather than on the ground of breach of warranty of authority (see *Jenkins v Fereday* (1872) LR 7 CP 358 at 360, where the attorney must have known of the want of authority).

4 *Black v Creighton* (1828) 2 Mol 552; *Taylor v Gorman* (1842) 4 I Eq R 550; *Re Bolton* (1846) 9 Beav 272; and see *White v Hillacre* (1838) 3 Y & C Ex 278.

5 *Re Gray, Gray v Coles* (1891) 65 LT 743; *Porter v Fraser* (1912) 29 TLR 91.

6 See *Freeman v Fairlie* (1838) 8 LJ Ch 44. As to the principle of warranty of authority to third persons see *Yonge v Toynbee* [1910] 1 KB 215, CA.

7 *Re Savage* (1880) 15 ChD 557, where in special circumstances costs were given to the applicants; *Cape v Breton Co and Fenn* (1881) 17 ChD 198; *Fricker v Van Grutten* [1896] 2 Ch 649, CA; *Gold Reefs of Western Australia Ltd v Dawson* [1897] 1 Ch 115; *Newbiggin-by-the-Sea Gas Co v Armstrong* (1879) 13 ChD 310, CA, following *Reynolds v Howell* (1873) LR 8 QB 398. The alleged client may, however, ratify the solicitor's act: *Norton v Cooper*, *Re Manby and Hawksford*, *ex p Bittleston* (1856) 3 Sm & G 375; *Reynolds v Howell*; and see *Hambidge v De La Crouée* (1846) 3 CB 742.

8 *Newbiggin-by-the-Sea Gas Co v Armstrong* (1879) 13 ChD 310, CA; *Nurse v Durnford* (1879) 13 ChD 764; *Geilinger v Gibbs* [1897] 1 Ch 479; and see *Wright v Castle* (1817) 3 Mer 12; *Hall v Bennett* (1824) 2 Sim & St 78; *Malins v Greenway* (1847) 10 Beav 564; *Bayley v Buckland* (1847) 1 Exch 1; *Schjott v Schjott* (1881) 19 ChD 94, CA. See generally PARA 795 et seq. The modern cases in which the application is made by an opposite party proceed on the basis of breach of warranty of authority following *Yonge v Toynbee* [1910] 1 KB 215, CA.

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885. Liability of solicitor litigant.

A solicitor who is ordered to pay costs as an unsuccessful litigant is not subject to the summary jurisdiction of the court¹. However the jurisdiction applies where the action although brought in the name of a client is in reality brought by the solicitor on his own behalf².

1 *Re Hope* (1872) 7 Ch App 523 at 525; and see *Tilney v Stansfeld* (1880) 28 WR 582; *Re Appelt, ex p Byrne* (1889) 6 Morr 102; *Farley v Buckler* (1893) Times, 30 October.

2 *Cockle v Whiting* (1829) 1 Russ & M 43; *Re Jones* (1870) 6 Ch App 497.

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(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE

(i) In general

886. Introduction.

Until a day to be appointed, the Legal Services Ombudsman has responsibility for investigating allegations concerning the manner in which complaints made to any body having disciplinary powers in relation to barristers has been dealt with¹. The office was created by the Courts and Legal Services Act 1990². The Ombudsman has wide-ranging powers to order the reconsideration of complaints and the payment of compensation to complainants³, and to make recommendations as to the functioning of disciplinary bodies⁴.

As from a day to be appointed these functions will vest in the Office of Legal Complaints, which is constituted under the Legal Services Act 2007⁵.

1 See the Courts and Legal Services Act 1990 s 22(1) (as prospectively repealed); and PARA 424 et seq. As to the bodies having disciplinary powers in relation to barristers see PARAS 1254-1292. The Ombudsman may not investigate an issue which is being or has been determined by a disciplinary tribunal: see s 22(7) (as prospectively repealed); and PARA 426.

2 See the Courts and Legal Services Act 1990 s 21 (as prospectively repealed); and PARA 424.

3 See the Courts and Legal Services Act 1990 s 23 (as prospectively repealed); and PARAS 431-432.

4 See the Courts and Legal Services Act 1990 s 24 (as prospectively repealed); and PARA 433.

5 See the Legal Services Act 2007 s 114, Sch 15 (Sch 15 not yet in fully force); and PARA 442 et seq.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(ii) Duties in relation to Complaints/887. Complaint handling.

(ii) Duties in relation to Complaints

887. Complaint handling.

The following is the responsibility of a principal in a firm¹. The firm must have a written complaints procedure and complaints must be handled promptly, fairly and effectively in accordance with that procedure². The client must be given a copy of the complaints procedure and told in writing, at the outset, that in the event of a problem he is entitled to complain and to whom he should complain³. Once a complaint is made the person complaining must be told in writing how the complaint will be handled and within what timescales he will receive a substantive response⁴. If a principal⁵ discovers an act or omission which could give rise to a claim, he must inform his client⁶.

When a client makes a claim or notifies an intention to do so he must also be informed that independent advice should be sought⁷. If a conflict of interest has arisen the principal must stop working for the client in the matter of the claim⁸. The qualifying insurer or the Assigned Risks Pool Manager or, if appropriate, the Solicitors Indemnity Fund Ltd must be notified⁹.

Solicitors have a duty to report any serious misconduct and financial difficulties of another solicitor to the Solicitors Regulation Authority¹⁰. A solicitor also has a duty co-operate with the Authority and the Legal Complaints Service and not to hinder any person who wishes to make a complaint to those bodies about them¹¹.

1 See the Solicitors' Code of Conduct 2007 r 2.05(1). If a principal can demonstrate that it was inappropriate in the circumstances to meet some or all of the requirements of r 2.05(1) he will not breach r 2.05: r 2.05(2). As to the meaning of 'principal' see PARA 676 note 12. As to the meaning of 'firm' see PARA 676 note 10.

2 See the Solicitors' Code of Conduct 2007 r 2.05(1)(a).

3 See the Solicitors' Code of Conduct 2007 r 2.05(1)(b), (c).

4 See the Solicitors' Code of Conduct 2007 r 2.05(d). A client must not be charged for the handling of a complaint: r 2.05(3).

5 This also applies to a director of a recognised body which is a company, a member of a recognised body which is a limited liability partnership or a recognised body: see the Solicitors' Code of Conduct 2007 r 20.07(1). As to the meaning of 'recognised body' see PARA 687 note 3. Rule 20 also applies to an overseas practice: see r 15.20.

6 See the Solicitors' Code of Conduct 2007 r 20.07(1).

7 See the Solicitors' Code of Conduct 2007 r 20.07(2)(a). This does not apply if the client's loss is trivial and promptly remedied.

8 See the Solicitors' Code of Conduct 2007 r 20.07(2)(b).

9 See the Solicitors' Code of Conduct 2007 r 20.07(2)(c). As to the indemnity fund see PARA 854.

10 See the Solicitors' Code of Conduct 2007 r 20.04; and PARA 619.

11 See the Solicitors' Code of Conduct 2007 rr 20.03(1), 20.05; and PARAS 619, 632. Any request for documents and information by the Authority must be dealt with promptly: see r 20.06; and PARA 619.

UPDATE

887 Complaint handling

TEXT AND NOTES--Solicitors' Code of Conduct 2007 r 2.05 amended on 31 March 2009, 31 March 2010, r 15.20 amended on 31 March 2009, r 20.04 amended on 1 July 2009.

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(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority

888. Provision of information and documents.

Until a day to be appointed the following provisions have effect¹. Where the Solicitors Regulation Authority² is satisfied that it is necessary to do so³ it may give notice to the solicitor or his firm requiring the production or delivery to any person appointed by the Authority, at a time and place to be fixed by the Authority, of all relevant documents in the possession of the solicitor or his firm⁴.

As from a day to be appointed the following provisions have effect⁵. The Authority may by notice⁶ require a person⁷ to provide information, or information of a description, specified in the notice or to produce documents, or documents of a description, specified in the notice⁸.

Such a notice:

- 1222 (1) may specify the time and place at which, and manner and form in which, the information is to be provided or document is to be produced;
- 1223 (2) must specify the period within which the information is to be provided or the document produced;
- 1224 (3) may require the information to be provided or document to be produced to the Authority or to a person specified in the notice⁹.

The Authority may require, by notice, a person to whom a notice is given under the above provisions (or a representative of the person) to attend at a time and place specified in the notice to provide an explanation of any information provided or document produced relevant to the notice¹⁰.

The High Court on the application of the Authority may order¹¹ a person to whom the above provisions¹² do not apply to provide information, or information of a description, specified in the notice¹³, or to produce documents, or documents of a description, specified in the notice¹⁴.

It is an offence for a person in purported compliance with a requirement imposed on that person under the above provisions¹⁵ to provide information which the person knows to be false or misleading in a material particular or recklessly to provide information which is false or misleading in a material particular¹⁶.

1 The Solicitors Act 1974 s 44B (added by the Administration of Justice Act 1985 ss 2, 69(5), Sch 9 para 2) is substituted and the Solicitors Act 1974 ss 44BA-44BC are added by the Legal Services Act 2007 Sch 16 para 44 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 44B refers to the 'Council' (ie the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1))). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 ie for the purpose of investigating:

- 228 (1) whether there has been professional misconduct by a solicitor;
- 229 (2) whether a solicitor has failed to comply with any requirement imposed by or by virtue of the Solicitors Act 1974 or any rules made by the Authority;
- 230 (3) whether any professional services provided by a solicitor were not of the quality which it is reasonable to expect of him as a solicitor; or
- 231 (4) whether there are grounds for making, or making an application to the Solicitors Disciplinary Tribunal for it to make, an order under s 43(2) (see PARA 927) with respect to a person who is or was employed or remunerated by a solicitor in connection with his practice (s 44B(1)(a)-(d) (as added (see note 1); and substituted by the Access to Justice Act 1999 Sch 7 para 11(2))).

It is an offence for a person who knows or suspects an investigation into any of the matters mentioned in heads (1)-(4) above is being or is likely to be conducted to falsify, conceal, destroy or otherwise dispose of a document which the person knows or suspects is or would be relevant to the investigation or to cause or permit the falsification, concealment, destruction or disposal of such a document: s 44BC(1) (as prospectively added). In proceedings for such an offence it is a defence for the accused to show that the accused had no intention of concealing facts disclosed by the documents from the person conducting the investigation: s 44BC(2) (as so prospectively added). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 44BC(4) (as so prospectively added). As from a day to be appointed (ie the date on which the Criminal Justice Act 2003 s 154(1) comes into force) the reference to 6 months is to be read as a reference to 12 months: see the Solicitors Act 1974 s 44BC(5) (as so prospectively added). As to the statutory maximum see PARA 553 note 6.

4 Solicitors Act 1974 s 44B(1) (as added: see note 1). The Solicitors Act 1974 Sch 1 paras 9(2)-(12), 12-16 (see PARAS 891-894) apply to the powers conferred by s 44B(1) as they apply to the powers conferred by Sch 1 para 9(1): see s 44B(2) (as so added).

5 See note 1.

6 The Authority may give a notice under the Solicitors Act 1974 s 44B only if it is satisfied that it is necessary to do so for the purpose of investigating:

- 232 (1) whether there has been professional misconduct by a solicitor;
- 233 (2) whether a solicitor, or an employee of a solicitor, has failed to comply with any requirements imposed by or by virtue of the Solicitors Act 1974 or any rules made by the Authority (s 44B(3)(a) (as added and prospectively substituted: see note 1));
- 234 (3) whether a recognised body, or any of its managers or employees has failed to comply with any requirement imposed by or by virtue of the Administration of Justice Act 1985 or any rules made by the Authority and applicable to the body, manager or employee by virtue of s 9 (Solicitors Act 1974 s 44B(3)(b) (as so added and prospectively substituted));
- 235 (4) whether there are grounds for making, or making an application to the Tribunal for it to make, an order under the Solicitors Act 1974 s 43(2) (see PARA 927) with respect to a person who is or was involved in a legal practice (s 44B(3)(c) (as so added and prospectively substituted)).

As to when a person is or was involved in a legal practice see s 43(1A); and PARA 927.

7 The Solicitors Act 1974 s 44B applies to:

- 236 (1) a solicitor;
- 237 (2) an employee of a solicitor;
- 238 (3) a recognised body;
- 239 (4) an employee or manager of, or a person with an interest in, a recognised body (s 44B(2) (as added and prospectively substituted: see note 1)).

As to the meaning of 'manager' see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Solicitors Act 1974 s 44B(9) (as so added and prospectively substituted)). As to the meaning of

'recognised body' see the Administration of Justice Act 1985 s 9; and PARA 687 note 3 (definition applied by the Solicitors Act 1974 s 44B(9) (as so added and prospectively substituted). As to a person who has an interest in a recognised body see the Legal Services Act 2007 ss 72, 109; and PARAS 1476-1477 (definition applied by the Solicitors Act 1974 s 44B(9) (as so added and prospectively substituted)). Until a day to be appointed (ie the coming into force of the Legal Services Act 2007 s 13 (see PARA 509)) the Solicitors Act 1974 s 44B has effect as if the list of persons in s 44B(2) included a legal partnership: Sch 22 para 13. For this purpose 'legal partnership' means a partnership in which a qualified solicitor, a registered European Lawyer or a body recognised under the Administration of Justice Act 1985 s 9 is permitted to practise by virtue of rules made under s 9 or the Solicitors Act 1974 s 31: Legal Services Act 2007 Sch 5 para 7 (definition applied by Sch 22 para 13).

The Authority may pay to any person such reasonable costs as may be incurred by that person in connection with the provision of any information, or production of any document, by that person pursuant to a notice under the Solicitors Act 1974 s 44B: s 44B(5) (as so added and prospectively substituted).

8 Solicitors Act 1974 s 44B(1) (as added and prospectively substituted: see note 1). Schedule 1 paras 9(3), 13, 15, 16 (see PARAS 890-891, 894) apply in relation to the powers to obtain information conferred by s 44B: see s 44B(6) (as so added and prospectively substituted). Schedule 1 paras 9(2), (4)-(12), 12, 13, 15, 16 apply in relation to the power to obtain documents conferred by s 44B as they apply in relation to the powers conferred by Sch 1 para 9(1): see s 44B(7) (as so added and prospectively substituted). Where such powers are exercisable in relation to a person within s 44B(2) they continue to be so exercisable after the person has ceased to be such a person: s 44B(8) (as so added and prospectively substituted).

9 Solicitors Act 1974 s 44B(4) (as added and prospectively substituted: see note 1).

10 Solicitors Act 1974 s 44BA(1) (as prospectively added: see note 1). The Authority may pay to any person such reasonable costs as may be incurred by that person in connection with that person's compliance with such a requirement: s 44BA(2) (as so prospectively added). Schedule 1 paras 9(3), (4), 13, 15, 16 (see PARAS 890-891, 894) apply in relation to a notice given under s 44BA: see s 44BA(3) (as so prospectively added).

11 The High Court may make such an order only if it is satisfied that it is likely that the information or document is in the possession or custody of, or under the control of, the person and that there is reasonable cause to believe that the information or document is likely to be of material significance to an investigation into any of the matters mentioned in the Solicitors Act 1974 s 44B(3): s 44BB(2) (as prospectively added: see note 1). Such an order may direct the Authority to pay to a person specified in the order such reasonable costs as may be incurred by that person in connection with the provision of any information, or production of any document, by that person pursuant to the order: s 44BB(3) (as so prospectively added).

12 Ie the Solicitors Act 1974 s 44B.

13 The Solicitors Act 1974 s 44B(4) applies in relation to an order under s 44BB as it applies in relation to a notice under s 44B: s 44BB(4) (as prospectively added: see note 1). Schedule 1 paras 9(5A), (7)-(12), 12, 13, 15, 16 apply in relation to an order under s 44BB as they apply in relation to an order under Sch 1 para 9(4): see s 44BB(5) (as so prospectively added).

14 Solicitors Act 1974 s 44BB(1) (as prospectively added: see note 1).

15 Ie imposed on a person under the Solicitors Act 1974 ss 44B, 44BA, 44BB.

16 Solicitors Act 1974 s 44BC(3) (as prospectively added: see note 1). A person guilty of such an offence is liable on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both or on conviction on indictment to imprisonment for a term not exceeding two years or a fine or both: s 44BC(4) (as so prospectively added). As from a day to be appointed (ie the date on which the Criminal Justice Act 2003 s 154(1) comes into force) the reference to six months is to be read as a reference to 12 months: see the Solicitors Act 1974 s 44BC(5) (as so prospectively added).

UPDATE

888-889 Provision of information and documents, Investigation costs

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

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889. Investigation costs.

Until a day to be appointed the following provisions have effect¹. Where the Solicitors Regulation Authority² investigates possible professional misconduct by a solicitor, or a failure or apprehended failure by a solicitor to comply with any requirement imposed by or by virtue of the Solicitors Act 1974 or any rules made by the Authority, the Authority may direct him to pay to the Authority an amount which is calculated by the Authority as the cost to the Authority of investigating and dealing with the matter or in the opinion of the Authority represents a reasonable contribution towards that cost³.

As from a day to be appointed the following provisions have effect⁴. The Authority may make regulations⁴ prescribing charges to be paid to the Authority by solicitors⁵ who are the subject of a discipline investigation⁶.

1 The Solicitors Act 1974 s 44C (added by the Access to Justice Act 2007 Sch 7 para 13) is substituted by the Legal Services Act 2007 Sch 16 para 45 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 44C refers to the 'Society' or the 'Council' (ie the Law Society and the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 Solicitors Act 1974 s 44C (as added: see note 1).

4 Such regulations may:

240 (1) make different provision for different cases or purposes;

241 (2) provide for the whole or part of a charge payable under the regulations to be repaid in such circumstances as may be prescribed by the regulations: Solicitors Act 1974 s 44C(3) (as added; prospectively substituted (see note 1)).

5 The Solicitors Act 1974 s 44C (other than s 44C(2)(a)) applies in relation to an employee of a solicitor as it applies in relation to a solicitor: s 44C(5) (as added and prospectively substituted: see note 1).

6 Solicitors Act 1974 s 44C(1) (as added and prospectively substituted (see note 1)). A 'discipline investigation' is an investigation carried out by the Authority into:

242 (1) possible professional misconduct by a solicitor (s 44C(2)(a) (as so added and prospectively substituted)); or

243 (2) a failure or apprehended failure by a solicitor to comply with any requirement imposed by or by virtue of the Solicitors Act 1974 or any rules made by the Authority (s 44C(2)(b) (as so added and prospectively substituted)).

Any charge which a solicitor is required to pay under regulations under s 44C is recoverable by the Authority as a debt due to the Authority from the solicitor: s 44C(4) (as so added and prospectively substituted).

UPDATE

888-889 Provision of information and documents, Investigation costs

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/890. Circumstances in which the Solicitors Regulation Authority may intervene.

890. Circumstances in which the Solicitors Regulation Authority may intervene.

The Solicitors Regulation Authority¹ has extensive powers of intervention in a solicitor's practice², which it may exercise where:

- 1225 (1) the Authority has reason to suspect dishonesty³ on the part of a solicitor, an employee of a solicitor or the personal representatives of a deceased solicitor in connection with that solicitor's practice or with any trust⁴ of which that solicitor is or formerly was a trustee⁵;
- 1226 (2) the Authority considers that there has been undue delay on the part of the personal representatives of a deceased solicitor who immediately before his death was practising as a sole solicitor⁶ in connection with that solicitor's practice or in connection with any controlled trust⁷;
- 1227 (3) the Authority is satisfied that a solicitor has failed to comply with rules relating to professional practice, conduct and discipline⁸, accounts rules or trust accounts rules⁹, or with indemnity rules¹⁰ requiring solicitors to take out insurance¹¹;
- 1228 (4) a solicitor has been adjudged bankrupt or has made a composition or arrangement with his creditors¹²;
- 1229 (5) a solicitor has been committed to prison in any civil or criminal proceedings¹³;
- 1230 (6) the Authority is satisfied that a sole solicitor is incapacitated by illness or accident to such an extent as to be unable to attend to his practice¹⁴;
- 1231 (7) a solicitor lacks capacity¹⁵ to act as a solicitor and certain powers¹⁶ under the Mental Capacity Act 2005 are exercisable in relation to him¹⁷;
- 1232 (8) the name of a solicitor has been removed from or struck off the roll or a solicitor has been suspended from practice¹⁸;
- 1233 (9) the Authority is satisfied that a sole solicitor has abandoned his practice¹⁹;
- 1234 (10) the Authority is satisfied that a sole solicitor is incapacitated by age to such an extent as to be unable to attend to his practice²⁰;
- 1235 (11) any power conferred by these provisions²¹ has been exercised in relation to a sole solicitor by virtue of head (1) and he has acted as a sole solicitor within the period of 18 months beginning with the date on which it was so exercised²²;
- 1236 (12) the Authority is satisfied that a person has acted as a solicitor at a time when he did not have a practising certificate which was in force²³;
- 1237 (13) the Authority is satisfied that a solicitor has failed to comply with any condition, subject to which his practising certificate was granted or otherwise has effect, to the effect that he may act as a solicitor only in certain circumstances²⁴;
- 1238 (14) a complaint is made to the Authority that there has been undue delay on the part of a solicitor in connection with any matter in which he or his firm was instructed on behalf of a client²⁵ or with any controlled trust²⁶, and the solicitor fails within eight days of being invited in writing to do so by the Authority²⁷ to give an explanation which the Authority regards as satisfactory²⁸;
- 1239 (15) as from a day to be appointed, the Authority has reason to suspect dishonesty on the part of a solicitor in connect with the business of any person of whom the solicitor is or was an employee or of any body of which the solicitor is or

was a manager or any business which is or was carried on by the solicitor as a sole trader²⁹;

1240 (16) as from a day to be appointed, the Authority is satisfied that it is necessary to exercise certain powers³⁰ in relation to a solicitor to protect the interests of clients (or former or potential clients) of the solicitor or his firm or the interests of the beneficiaries of any trust of which the solicitor is or was a trustee³¹.

Where the powers of intervention are exercisable in relation to a solicitor, they continue to be exercisable after his death or after his name has been removed from or struck off the roll³².

1 The Solicitors Act 1974 Sch 1 refers to the 'Society' or until a day to be appointed the 'Council' (ie the Law Society and the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)): see Sch 1 (prospectively amended by the Legal Services Act 2007 Sch 16 para 77). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 See the Solicitors Act 1974 s 35, Sch 1 Pt II (paras 5-16); and PARA 891 et seq. The Authority may do all things which are reasonably necessary for the purpose of facilitating the exercise of its powers under Sch 1: Sch 1 para 16. The powers of intervention so conferred are also exercisable in relation to a recognised body and its business in certain circumstances: see the Administration of Justice Act 1985 s 9(6), Sch 2 paras 32-34; and PARA 718. As to the meaning of 'recognised body' see PARA 687 note 3. When hearing a challenge to an intervention into a solicitor's practice, the court is not confined only to a review of the decision to intervene, but also whether the grounds for the intervention had been made out and still existed, and if so, whether on the material before the court the intervention should continue: see *Law Society of England and Wales v Share* [2008] All ER (D) 361 (Jul).

3 In this context the word 'dishonesty' is wide enough to cover the making of fictitious entries in a solicitor's records, even though causing no financial loss to anyone: *Re a Solicitor (No 52700 of 1995)* (1995) Times, 11 July. There is no requirement for the solicitor to be given particulars of the suspected dishonesty at the time that a notice of intervention is served: *Giles v Law Society* (1995) Times, 20 October, CA. When deciding the issue of dishonesty it is necessary for the Tribunal to determine whether the solicitor had acted dishonestly by the ordinary standards of reasonable and honest people and whether he was aware that by those standards he was acting dishonestly: see *Bryant v Law Society* [2007] EWHC 3043 (Admin) [2007] All ER (D) 379 (Dec).

4 As to the meaning of 'trust' see PARA 835 note 4.

5 Solicitors Act 1974 Sch 1 para 1(1)(a). As from a day to be appointed Sch 1 para 1(1)(a) is amended by the Legal Services Act 2007 Sch 16 para 77(2)(a)(ii) so that it applies to a solicitor's practice or former practice or in connection with any trust of which that solicitor is or formerly was a trustee or that employee is or was a trustee in his capacity as such an employee. At the date at which this volume states the law no such day had been appointed.

6 'Sole solicitor' means a solicitor who is the sole principal in a practice: Solicitors Act 1974 s 87(1).

7 Solicitors Act 1974 Sch 1 para 1(1)(b). As from a day to be appointed the word 'trust' is substituted for the words 'controlled trust' by the Legal Services Act 2007 Sch 16 para 77(2)(c)(i). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'controlled trust' see PARA 835 note 8.

8 Ie rules made by virtue of the Solicitors Act 1974 s 31 (see PARA 828).

9 Ie rules made by virtue of the Solicitors Act 1974 s 32 (see PARA 835).

10 Ie rules made by virtue of the Solicitors Act 1974 s 37(2)(c) (see PARA 853).

11 Solicitors Act 1974 Sch 1 para 1(1)(c) (amended by the Access to Justice Act 1999 Sch 7 para 6). Until a day to be appointed the powers of intervention are only exercisable under head (3) in the text if the Authority has given the solicitor written notice that it is satisfied that he has failed to comply with specified rules and also that the powers conferred by Sch 1 Pt II are accordingly exercisable in his case: Sch 1 para 1(2). At the date at which this volume states the law no such day had been appointed.

12 Solicitors Act 1974 Sch 1 para 1(1)(d).

13 Solicitors Act 1974 Sch 1 para 1(1)(e).

14 Solicitors Act 1974 Sch 1 para 1(1)(ee) (added by the Administration of Justice Act 1985 s 8, Sch 1 para 13(1), (2)). As from a day to be appointed head (6) in the text is amended by the Legal Services Act 2007 Sch 16 para 77(2)(e)(ii) and will also apply when the Authority is satisfied that a sole solicitor is incapacitated by injury to such an extent as to be unable to attend to his practice. At the date at which this volume states the law no such day had been appointed.

15 As to the meaning of 'lacks capacity' see the Mental Capacity Act 2005; **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.

16 The powers under the Mental Capacity Act 2005 ss 15-20, or s 48 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 751, 756-760.

17 Solicitors Act 1974 Sch 1 para 1(1)(f) (substituted by the Mental Capacity Act 2005 Sch 6 para 22(4)).

18 Solicitors Act 1974 Sch 1 para 1(1)(g). As to removal from the roll see PARA 663.

19 Solicitors Act 1974 Sch 1 para 1(1)(h) (added by the Courts and Legal Services Act 1990 s 91(1)). As from a day to be appointed the word 'sole' is omitted from head (9) in the text by the Legal Services Act 2007 Sch 16 para 77(2)(f)(ii), Sch 23. At the date at which this volume states the law no such day had been appointed.

20 Solicitors Act 1974 Sch 1 para 1(1)(i) (added by the Courts and Legal Services Act 1990 s 91(1)).

21 The by virtue of the Solicitors Act 1974 Sch 1.

22 Solicitors Act 1974 Sch 1 para 1(1)(j) (added by the Courts and Legal Services Act 1990 s 91(1)).

23 Solicitors Act 1974 Sch 1 para 1(1)(k) (added by the Courts and Legal Services Act 1990 s 91(1)).

24 Solicitors Act 1974 Sch 1 para 1(1)(l) (added by the Courts and Legal Services Act 1990 s 91(1)). The certain circumstances mentioned in the text refer to:

244 (1) in employment which is approved by the Authority in connection with the imposition of that condition (Solicitors Act 1974 Sch 1 para 1(1)(l)(i) (as so added));

245 (2) as a member of a partnership which is so approved (Sch 1 para 1(1)(l)(ii) (as so added));

246 (3) as an officer of a body recognised by the Authority under the Administration of Justice Act 1985 s 9 and so approved (Solicitors Act 1974 Sch 1 para 1(1)(l)(iii) (as so added)); or

247 (4) in any specified combination of those ways (Sch 1 para 1(1)(l)(iv) (as so added)).

As from a day to be appointed the words 'a manager' are substituted for the words 'an officer' in head (3) by the Legal Services Act 2007 Sch 16 para 77(2)(h)(ii). At the date at which this volume states the law no such day had been appointed. As to the meaning of 'manager' see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Solicitors Act 1974 Sch 1 para 1A (prospectively added by the Legal Services Act 2007 Sch 16 para 77(2)(j))).

25 As to the meaning of 'client' see PARA 835 note 6.

26 Solicitors Act 1974 Sch 1 para 3(a). As from a day to be appointed Sch 1 para 3(a) is substituted by the Legal Services Act 2007 Sch 16 para 77(3)(b) to apply where the Authority is satisfied that there has been undue delay:

248 (1) on the part of a solicitor in connection with any matter in which the solicitor or his firm is or was acting on behalf of a client or with any trust (Sch 1 para 3(a)(i)); or

249 (2) on the part of an employee of a solicitor in connection with any trust of which the employee is or was a trustee in his capacity as such an employee (Sch 1 para 3(a)(ii)).

In the circumstances described in head (14) in the text, powers are not exercisable under Sch 1 para 5 (High Court order restricting payments), or Sch 1 para 10 (High Court order to divert mail): Sch 1 paras 5(4), 10(3).

27 Solicitors Act 1974 Sch 1 para 3(b).

28 Solicitors Act 1974 Sch 1 para 3(c). The Authority must give the solicitor notice of the failure and notice that the powers conferred by Sch 1 Pt II are accordingly exercisable: Sch 1 para 3(d).

29 Solicitors Act 1974 Sch 1 para 1(1)(aa) (prospectively added by the Legal Services Act 2007 Sch 16 para 77(2)(b)).

30 ie the powers conferred by the Solicitors Act 1974 Sch 1 Pt II (or any of them).

31 Solicitors Act 1974 Sch 1 para 1(1)(m) (prospectively added by the Legal Services Act 2007 Sch 16 para 77(2)(i)).

32 Solicitors Act 1974 Sch 1 para 4(1).

UPDATE

890-893 Circumstances in which the Solicitors Regulation Authority may intervene ... Other powers of intervention

Amendments made by Legal Services Act 2007 Sch 16 para 77 in force 31 March 2009: SI 2009/3250.

890 Circumstances in which the Solicitors Regulation Authority may intervene

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/891. Taking possession of solicitor's documents.

891. Taking possession of solicitor's documents.

Where the powers of intervention are exercisable in relation to a solicitor¹, the Solicitors Regulation Authority² may give notice to the solicitor or his firm³ requiring the production or delivery to any person appointed by it and at a fixed time and place of all documents in the possession of the solicitor or his firm in connection with his practice or any controlled trust⁴ or, where the powers are exercisable because of a complaint of the solicitor's delay⁵, of all such documents in connection with the trust⁶ or other matters to which the complaint relates, whether or not they relate also to other matters⁷.

On the application of the Authority, the High Court may order a person required to produce or deliver such documents to produce or deliver them to any person appointed by the Authority at a specified time and place and authorise him to take possession of them on behalf of the Authority⁸, and, on the application of the Authority, the High Court may make a similar order with respect to a person other than the solicitor or his firm where it is satisfied and has reason to suspect that such documents have come into the possession of that other person⁹.

Upon taking possession of any such documents the Authority must serve upon the solicitor or his personal representatives, and upon any other person from whom they were received on the Authority's behalf or from whose premises they were taken, a notice that possession has been taken on the date specified in the notice¹⁰, and within eight days thereafter¹¹ a person upon whom such a notice has been served, on giving not less than 48 hours' notice to the Authority, may apply to the High Court for an order directing the Authority to deliver the documents to such person as the applicant may require¹².

The Authority is also empowered to apply to the High Court for orders in respect of the disposal or destruction of documents coming into its possession pursuant to the exercise of these powers¹³.

1 As to when the powers of intervention are exercisable see PARA 890.

2 The Solicitors Act 1074 Sch 1 para 9 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 For these purposes, references to the solicitor or his firm include, in any case where the solicitor has died, his personal representatives: Solicitors Act 1974 s 35, Sch 1 para 4(2).

4 Solicitors Act 1974 Sch 1 para 9(1)(a). As from a day to be appointed Sch 1 para 9(1)(a) is amended by the Legal Services Act 2007 Sch 16 para 77(9)(a)(i) and instead applies to all the documents in the possession or under the control of the solicitor or his firm in connection with his practice or former practice or with any trust of which the solicitor is or was a trustee. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'controlled trust' see PARA 835 note 8. The person appointed by the Authority may take possession of the documents on its behalf: Solicitors Act 1974 Sch 1 para 9(2). The Authority may do all things reasonably necessary to facilitate the exercise of its power: Sch 1 para 16. If any person having possession (or as from a day to be appointed, control) of any such documents refuses, neglects or otherwise fails to comply with these provisions, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 1 para 9(3) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46; and prospectively amended by the Legal Services Act 2007 Sch 1 para 77(9)(c)). Where an offence under the Solicitors Act 1974 Sch 1 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary

or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly: Sch 1 para 14. As to the standard scale see PARA 571 note 1. The power to seize documents must be exercised with care and 'fair balance': *Holder v Law Society* [2003] EWCA Civ 39, [2003] 3 All ER 62, [2003] 1 WLR 1059. As from a day to be appointed in the case of a document which consists of information which is stored in electronic form, a requirement imposed by a notice under the Solicitors Act 1974 Sch 1 para 9(1) or an order under Sch 1 para 9(4) or (5) is a requirement to produce or deliver the information in a form in which it is legible or from which it can readily be produced in a legible form: Sch 1 para 9(5A) (added by the Legal Services Act 2007 Sch 16 para 77(9)(e)). At the date at which this volume states the law no such day had been appointed.

5 le under the Solicitors Act 1974 Sch 1 para 3: see PARA 890.

6 As to the meaning of 'trust' see PARA 835 note 4.

7 Solicitors Act 1974 Sch 1 para 9(1)(b). As from a day to be appointed Sch 1 para 9(1)(b) is amended by the Legal Services Act 2007 Sch 77(9)(b)(i) and instead relates to all such documents of the solicitor or his firm in connection with the trust or other matters of which the Authority is satisfied whether or not they relate also to other matters. At the date at which this volume states the law no such day had been appointed. See also note 4.

8 Solicitors Act 1974 Sch 1 para 9(4). See also note 7. The person against whom the Authority is seeking an order must be made a defendant to the application: CPR 67.4(5).

9 Solicitors Act 1974 Sch 1 para 9(5). As from a day to be appointed Sch 1 para 9(5) is amended by the Legal Services Act 2007 Sch 16 para 77(9)(d) and applies where there is reason to suspect that such documents have come into the possession or under the control of that other person. For the procedure on the application see PARA 894. On making an order under these provisions or at any later time the court may, on the application of the Authority, authorise a person appointed by the Authority to enter any premises (using such force as may be reasonably necessary) to search for and take possession of any documents to which the order relates and, as from a day to be appointed, any property in the possession of or under the control of the solicitor or his firm or, in the case of an order under Sch 1 para 9(5), which was in the possession or under the control of such a person and has come into the possession or under the control of the person in respect of whom the order is made, which the Authority reasonably requires for the purpose of accessing information contained in such documents, and to use property obtained under these provisions for that purpose: Solicitors Act 1974 Sch 1 para 9(6) (prospectively amended by the Legal Services Act 2007 Sch 16 para 77(9)(g)). Unless restricted by an order on an application under the Solicitors Act 1974 Sch 1 para 9(8) or (10) (see the text and notes 12-13), the Authority may take copies of or extracts from documents in its possession and require any person to whom documents are to be delivered to give an undertaking to supply copies or extracts: Sch 1 para 9(12). The powers conferred by Sch 1 in relation to documents are exercisable notwithstanding any lien on them or right to their possession: Sch 1 para 12. The person against whom the Authority is seeking an order must be made a defendant to the application: CPR 67.4(5).

10 Solicitors Act 1974 Sch 1 para 9(7). As from a day to be appointed Sch 1 para 9(7), (8), (10) are amended by the Legal Services Act 2007 Sch 16 para 77(9)(h)-(j) to refer to documents or other property. At the date at which this volume states the law no such day had been appointed.

11 Solicitors Act 1974 Sch 1 para 9(9) (prospectively amended: see note 10).

12 Solicitors Act 1974 Sch 1 para 9(8) (prospectively amended: see note 10). On the application the court may make such order as it thinks fit: Solicitors Act 1974 Sch 1 para 9(11). As to the procedure on such applications see PARA 894. The Solicitors Regulation Authority must be made a defendant to the application: CPR 67.4(5). The CPR 67.4(5) refers to the Law Society but in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority.

13 Solicitors Act 1974 Sch 1 para 9(10) (prospectively amended: see note 10). On such an application the court may make such order as it thinks fit: Sch 1 para 9(11). For the procedure see PARA 894. The person from whom the Authority took possession of the documents which it wishes to dispose of or destroy must be made a defendant to the application: CPR 67.4(5).

UPDATE

890-893 Circumstances in which the Solicitors Regulation Authority may intervene ... Other powers of intervention

Amendments made by Legal Services Act 2007 Sch 16 para 77 in force 31 March 2009:
SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/892. Control of solicitor's bank accounts.

892. Control of solicitor's bank accounts.

Where the powers of intervention are exercisable in relation to a solicitor¹, the High Court, on the application of the Solicitors Regulation Authority², may order that no payment is to be made without the leave of the court by any person, whether or not named in the order, of any money held by him (in whatever manner and whether it was received before or after the making of the order) on behalf of the solicitor or his firm³. No such order may take effect in relation to any person until the Authority has served a copy upon him, whether or not he is named in it⁴; and no person is treated as having disobeyed such an order by making a payment of money if he satisfies the court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to that money⁵.

The Authority may pass a resolution to the effect that any specified sums of money⁶ and the right to recover or receive them are to vest in the Authority, in which event all such sums vest accordingly, whether received by the person holding them before or after the Authority's resolution, and are held by the Authority on trust to exercise in relation to them the powers conferred on the Authority⁷ and otherwise upon trust for the persons beneficially entitled to them⁸.

The Authority must serve on the solicitor or on his firm and on any other person having possession of sums of money to which the Authority's resolution relates a certified copy of the resolution and a notice prohibiting the payment out of any such sums of money⁹. Within eight days of the service of this notice, the person on whom it was served, on giving not less than 48 hours' written notice to the Authority and, where appropriate, to the Authority's solicitor, may apply to the High Court for an order directing the Authority to withdraw the notice¹⁰. If the court makes such an order, it has power also to make such other order with respect to the matter as it thinks fit¹¹.

If the Authority takes possession of any sum of money to which these provisions apply¹², it must pay it into a special account in the name of the Authority or of a person nominated on its behalf, or into the client account of a solicitor nominated on its behalf, and any such person or solicitor is to hold that sum on trust to permit the Authority to exercise any of its powers in relation to it¹³, and thereafter on trust for the persons beneficially entitled to it¹⁴. A bank or other financial institution at which such a special account is kept is, however, under no obligation to ascertain whether it is being dealt with properly¹⁵.

Without prejudice to any of the above provisions, if the High Court is satisfied, on an application by the Authority, that there is reason to suspect that any person holds money on behalf of the solicitor or his firm, the court may require that person to give the Authority information as to any such money and the accounts in which it is held¹⁶.

1 As to when the powers are exercisable see PARA 890. As to the application of these provisions in the case of a recognised body see the Administration of Justice Act 1985 Sch 2 para 14 (prospectively repealed); and PARAS 694, 710. As to the meaning of 'recognised body' see PARA 687 note 3.

2 The Solicitors Act 1974 Sch 1 refers to the 'Society' or until a day to be appointed the 'Council' (ie the Law Society and the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 Solicitors Act 1974 s 35, Sch 1 para 5(1). For these purposes, references to the solicitor or his firm include in any case where the solicitor has died, his personal representatives: Sch 1 para 4(2). Now, at any time after an application has been issued for an order under the Solicitors Act 1974 Sch 1 para 5, the court may, on an application, make an interim order under Sch 1 para 5 to have effect until the hearing of the application, and order the defendant, if he objects to the order being continued at the hearing, to file and serve written evidence showing cause why the order should not be continued: CPR 67.4(6). If the application under Sch 1 para 5 relates to money held on behalf of an individual solicitor, the solicitor must be made a defendant to the application: CPR 67.4(5). If the application under Sch 1 para 5 relates to money held on behalf of a firm, every partner in the firm must be made a defendant to the application: CPR 67.4(5). If the application under Sch 1 para 5 relates to money held on behalf of a limited liability partnership or other corporation, the partnership or other corporation must be made a defendant to the application: CPR 67.4(5). The Solicitors Act 1974 Sch 1 para 5 does not apply where the powers conferred by Sch 1 Pt II are exercisable by virtue of Sch 1 para 3 (see PARA 890): Sch 1 para 5(4).

4 Solicitors Act 1974 Sch 1 para 5(2). In the case of a bank or other financial institution, the Authority must indicate at which of its branches the Authority believes that the money to which the order relates is held: Sch 1 para 5(2) (amended by the Administration of Justice Act 1985 s 8, Sch 1 para 13(1), (3)).

5 See the Solicitors Act 1974 Sch 1 para 5(3).

6 These provisions apply:

250 (1) where the powers so conferred are exercisable by virtue of the Solicitors Act 1974 Sch 1 para 1 (see PARA 890), to all sums of money held by or on behalf of the solicitor or his firm in connection with his practice or with any trust of which he is or was formerly a trustee (Sch 1 para 6(2)(a));

251 (2) where they are exercisable on the death of a sole solicitor, to all sums of money held in any client account (Sch 1 paras 2, 6(2)(b)); and

252 (3) where they are exercisable by reason of the solicitor's delay, to all sums of money held by or on behalf of the solicitor or his firm in connection with the trust or other matter to which the complaint relates (Sch 1 paras 3, 6(2)(c)).

As to the meaning of 'trust' see para 835 note 4; as to the meaning of 'sole solicitor' see para 890 note 7; and as to the meaning of 'client account' see PARA 838 note 3.

As from a day to be appointed the following apply. Head (1) is amended and applies where the powers are exercisable by virtue of Sch 1 para 1 to all sums of money held by or on behalf of the solicitor or his firm in connection with his practice or former practice, any trust of which he is or formerly was a trustee or any trust of which a person who is or was an employee of the solicitor is or was a trustee in the person's capacity as such an employee: see the Solicitors Act 1974 Sch 1 para 6(2)(a) (prospectively amended by the Legal Services Act 2007 Sch 16 para 77(5)(b)). The following applies to any right to recover or receive debts due to the solicitor or his firm in connection with his practice or former practice: Sch 1 para 6A(2) (prospectively added by the Legal Services Act 2007 Sch 16 para 77(6)). Without prejudice to the Solicitors Act 1974 Sch 1 para 5, if the Authority passes a resolution to the effect that any rights to which Sch 1 para 6A applies must vest in the Authority, those rights must vest accordingly: Sch 1 para 6A(1) (as so prospectively added). Any sums recovered by the Authority by virtue of the exercise of rights vested under Sch 1 para 6A(1) must vest in the Authority and be held by it on trust to exercise in relation to them the powers conferred by Sch 1 Pt II and, subject to those powers and to rules under Sch 1 para 6B, upon trust for the persons beneficially entitled to them: Sch 1 para 6B(3) (as so prospectively added). The Authority must serve on the solicitor or his firm, and any person who owes a debt to which the order applies, a certified copy of the Authority's resolution: Sch 1 para 6B(4) (as so prospectively added). The Authority may make rules governing its treatment of sums vested in it under Sch 1 para 6 or 6A(3): Sch 1 para 6B (prospectively added by the Legal Services Act 2007 Sch 16 para 77(6)). The rules may in particular make provision in respect of cases where the Authority, having taken such steps to do so as are reasonable in all the circumstances of the case, is unable to trace the person or persons beneficially entitled to any sum vested in the Authority under Sch 1 para 6 or para 6A(3) (including provision which requires amounts to be paid into or out of compensation funds (within the meaning of s 36A)) (as so prospectively added).

At the date at which this volume states the law no such day had been appointed.

7 The powers conferred by the Solicitors Act 1974 Sch 1 Pt II and as from a day to be appointed to rules under Sch 1 para 6B (see PARA 892): Sch 1 para 6(1) (prospectively amended by the Legal Services Act 2007 Sch 16 para 77(5)(a)(iii)). At the date at which this volume states the law no such day had been appointed.

8 Solicitors Act 1974 Sch 1 para 6(1). These powers in relation to sums of money are exercisable notwithstanding any lien on them or right to their possession: Sch 1 para 12. This is without prejudice to Sch 1 para 5 (see PARA 892).

9 Solicitors Act 1974 Sch 1 para 6(3). If any person on whom such a notice has been served pays out sums of money at a time when such payment is prohibited by the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 1 para 6(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to offences by bodies corporate see PARA 891 note 4. As to the standard scale see PARA 571 note 1.

10 Solicitors Act 1974 Sch 1 para 6(4) (amended by the Administration of Justice Act 1985 Sch 1 para 13(1), (4)). The Solicitors Regulation Authority must be made a defendant to the application: CPR 67.4(5). The CPR 67.4(5) refers to the Law Society but in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority.

11 Solicitors Act 1974 Sch 1 para 6(5). See *Sritharan v Law Society* [2005] EWCA Civ 476, [2005] 4 All ER 1105, [2005] 1 WLR 2708.

12 Ie the Solicitors Act 1974 Sch 1 para 6 and as from a day to be appointed Sch 1 para 6A(3): Solicitors Act 1974 Sch 1 para 7(1) (prospectively amended by the Legal Services Act 2007 Sch 16 para 77(7)(a)).

13 Ie the powers conferred by the Solicitors Act 1974 Sch 1 Pt II and, as from a day to be appointed, under Sch 1 para 6B: see the Solicitors Act 1974 Sch 1 para 7(1) (prospectively amended by the Legal Services Act 2007 Sch 16 para 77(7)(b)).

14 Solicitors Act 1974 Sch 1 para 7(1) (amended by the Administration of Justice Act 1985 Sch 1 para 13(1), (5)).

15 Solicitors Act 1974 Sch 1 para 7(2) (amended by the Administration of Justice Act 1985 Sch 1 para 13(1), (3)).

16 Solicitors Act 1974 Sch 1 para 8. As from a day to be appointed Sch 1 para 8 is amended by the Legal Services Act 2007 Sch 16 para 77(8) to allow the court to require a person to give the relevant information where there is reason to suspect that that person has information which is relevant to identifying any money held by or on behalf of the solicitor or his firm. The person against whom the Authority is seeking an order must be made a defendant to the application: CPR 67.4(5).

UPDATE

890-893 Circumstances in which the Solicitors Regulation Authority may intervene ... Other powers of intervention

Amendments made by Legal Services Act 2007 Sch 16 para 77 in force 31 March 2009: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/893. Other powers of intervention.

893. Other powers of intervention.

If the solicitor or his personal representative is a trustee of a controlled trust¹, the Solicitors Regulation Authority² can apply to the High Court for an order for the appointment of a new trustee in substitution for him³.

Until a day to be appointed the following provisions have effect⁴. Where the powers of intervention are exercisable in relation to a solicitor⁵, the High Court, on the application of the Authority, may from time to time order that, for such time not exceeding 18 months as the court thinks fit, postal packets⁶ addressed to the solicitor or his firm⁷ at any place or places mentioned in the order are to be directed to the Authority or any person appointed by the Authority at any other address mentioned in the order, and the Authority or that person may take possession of any such packets received at that address⁸.

As from a day to be appointed the following provisions apply⁹. The High Court, on the application of the Authority, may from time to time make an order (a 'communications redirection order') that specified communications¹⁰ to the solicitor or his firm are to be directed, in accordance with the order, to the Authority or any person appointed by the Authority¹¹. A communications redirection order has effect for such time not exceeding 18 months as is specified in the order¹². Where a communications redirection order has effect, the Authority or the person appointed by the Authority may take possession or receipt of the communications redirected in accordance with the order¹³. Where a communications redirection order is made, the Authority must pay to, in the case of an order relating to postal packets, the postal operator¹⁴ concerned and, in any other case, the person specified in the order, the like charges (if any) as would have been payable for the redirection of the communications to which the order relates if the addressee had permanently ceased to occupy or use the premises or other destination of the communications and had applied to the postal operator or the specified person (as the case may be) to redirect the communications to him as mentioned in the order¹⁵. The High Court may, on the application of the Authority, authorise the Authority, or a person appointed by it, to take such steps as may be specified in the order in relation to any website purporting to be or have been maintained by or on behalf of the solicitor or his firm if the High Court is satisfied that the taking of those steps is necessary to protect the public interest or the interests of clients (or potential or former clients) of the solicitor or his firm¹⁶.

1 As to the meaning of 'controlled trust' see PARA 835 note 8. As from a day to be appointed the word 'trust' is substituted for the words 'controlled trust' by the Legal Services Act 2007 Sch 16 para 77(11). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 Sch 1 paras 10, 11 refer to the 'Society' (ie the Law Society (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 Solicitors Act 1974 Sch 1 para 11(1). The Trustee Act 1925 has effect in relation to the appointment of a new trustee under these provisions as it has effect in relation to an appointment under s 41 (see **TRUSTS** vol 48 (2007 Reissue) PARA 849 et seq): Solicitors Act 1974 Sch 1 para 11(2). The trustee whom the Authority is seeking to replace and, if he is a co-trustee, the other trustees of the trust, must be made defendants to the application: CPR 67.4(5).

4 The Solicitors Act 1974 Sch 1 para 10 is substituted by the Legal Services Act 2007 Sch 16 para 77(10) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

5 As to when the powers are exercisable see PARA 890. Powers in respect of mail are not exercisable on a complaint in respect of delay on the solicitor's part: see the Solicitors Act 1974 s 35, Sch 1 para 10(3).

6 'Postal packet' means a letter, parcel, packet or other article transmissible by post: Postal Services Act 2000 s 125(1) (definition applied by the Solicitors Act 1974 Sch 1 para 10(1) (amended by SI 2001/1149)).

7 For these purposes, references to the solicitor or his firm include, in any case where the solicitor has died, his personal representatives: Solicitors Act 1974 Sch 1 para 4(2).

8 Solicitors Act 1974 Sch 1 para 10(1). Where such an order is made the Authority must pay any redirection charges: see Sch 1 para 10(2). The Authority may apply for an order as to the disposal or destruction of any such documents in its possession (see Sch 1 para 9(10)); and may take copies or extracts from them (see Sch 1 para 9(12)). If the application relates to postal packets addressed to an individual solicitor, the solicitor must be made a defendant to the application: CPR 67.4(5). If the application relates to postal packets addressed to a firm, every partner in the firm must be made a defendant to the application: CPR 67.4(5). If the application relates to postal packets addressed to a limited liability partnership or other corporation, then the partnership or other corporation must be made a defendant to the application: CPR 67.4(5).

9 See note 4.

10 'Specified communications' means communications of such description as are specified in the order: Solicitors Act 1974 Sch 1 para 10(3)(a) (as prospectively substituted). The descriptions of communications which may be so specified include communications in the form of a postal packet, electronic communications, and communications by telephone: Sch 1 para 10(3)(b) (as so prospectively substituted).

11 Solicitors Act 1974 Sch 1 para 10(1), (2) (as prospectively substituted). Sch 1 para 10 does not apply where the powers conferred by Sch 1 Pt II are exercisable by virtue of Sch 1 para 3: Sch 1 para 10(9) (as so prospectively substituted).

12 Solicitors Act 1974 Sch 1 para 10(4) (as prospectively substituted).

13 Solicitors Act 1974 Sch 1 para 10(5) (as prospectively substituted).

14 As to the meaning of 'postal packet' see note 6 (definition applied by the Solicitors Act 1974 Sch 1 para 10(8) (as prospectively substituted)). 'Postal operator' means a person who provides the service of conveying postal packets from one place to another by post or any of the incidental services of receiving, collecting, sorting and delivering such packets: Postal Services Act 2000 s 125(1) (definition applied by the Solicitors Act 1974 Sch 1 para 10(8) (as so prospectively substituted)).

15 Solicitors Act 1974 Sch 1 para 10(6) (as prospectively substituted).

16 Solicitors Act 1974 Sch 1 para 10(7) (as prospectively substituted).

UPDATE

890-893 Circumstances in which the Solicitors Regulation Authority may intervene ... Other powers of intervention

Amendments made by Legal Services Act 2007 Sch 16 para 77 in force 31 March 2009: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/894. High Court procedure.

894. High Court procedure.

Proceedings in the High Court under the intervention provisions¹ must be brought in the Chancery Division². The proceedings must also be brought by Part 8 claim form³. Where proceedings are brought under certain provisions⁴ the court will give directions and fix a date for the hearing immediately upon issuing the claim form⁵.

Subject to any order for the payment of costs that may be made on such an application to the court, any costs incurred by the Solicitor Regulation Authority⁶, including the costs of any person exercising powers on its behalf, must be paid by the solicitor or his personal representatives and are recoverable from him or them as a debt owing to the Authority⁷.

As from a day to be appointed, the High Court, on the application of the Authority, may order a former partner of the solicitor to pay a specified⁸ proportion of the costs mentioned above⁹.

¹ ie under the Solicitors Act 1974 s 35, Sch 1: see PARA 890 et seq.

² CPR 67.4(1). Any application to the High Court under the Solicitors Act 1974 Sch 1 may be disposed of in chambers: Sch 1 para 15.

³ CPR 67.4(4). However this does not apply if CPR 67.4(4) applies. If the court has made an order under the Solicitors Act 1974 Sch 1, any subsequent application for an order under Sch 1 which has the same parties may be made by a Part 23 application in the same proceedings: CPR 67.4(4). The heading of the claim form must state that the claim relates to a solicitor and is made under the Solicitors Act 1974 Sch 1: CPR 67.4(2). As to Part 8 claim forms and Part 23 applications see **CIVIL PROCEDURE**.

⁴ ie under the Solicitors Act 1974 Sch 1 para 6(4) or 9(8).

⁵ CPR 67.4(3).

⁶ The Solicitors Act 1974 Sch 1 paras 13, 13A refer to the 'Society' (ie the Law Society (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

⁷ Solicitors Act 1974 Sch 1 para 13.

⁸ 'Specified' means specified in the order made by the High Court: Solicitors Act 1974 Sch 1 para 13A(3) (prospectively added by the Legal Services Act 2007 Sch 16 para 77(13)).

⁹ Solicitors Act 1974 Sch 1 para 13A (1) (prospectively added: see note 8). The High Court may make an order under Sch 1 para 13A only if it is satisfied that the conduct (or any part of the conduct) by reason of which the powers conferred by Sch 1 Pt II were exercisable in relation to the solicitor was conduct carried on with the consent or connivance of, or was attributable to any neglect on the part of, the former partner: Solicitors Act 1974 Sch 1 para 13A(2) (as so prospectively added).

UPDATE

894 High Court procedure

TEXT AND NOTES 8, 9--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/895. Redress for inadequate professional services.

895. Redress for inadequate professional services.

Until a day to be appointed the following provisions apply¹. Where it appears to the Legal Complaints Service (the 'LCS')² that the professional services provided by a solicitor in connection with any matter in which he or his firm have been instructed by a client³ have, in any respect, not been of the quality that could reasonably have been expected of him as a solicitor, the LCS may, if it thinks fit, take one or more of the following steps⁴. Those steps are:

- 1241 (1) determining that the costs⁵ to which the solicitor is entitled in respect of those services be limited to such amount as may be specified in the determination and directing him to comply, or to secure compliance, with such one or more permitted requirements⁶ as appear to the LCS to be necessary to give effect to its determination⁷;
- 1242 (2) directing the solicitor to secure the rectification, at his expense or that of his firm, of any such error, omission or other deficiency arising in connection with the matter as the LCS may specify⁸;
- 1243 (3) directing the solicitor to pay such compensation to the client as the LCS sees fit to specify⁹;
- 1244 (4) directing the solicitor to take, at his expense or that of his firm, such other action in the interests of the client as the LCS may specify¹⁰.

The LCS must not, however, take any of these steps unless it is satisfied that it would be appropriate to do so in all the circumstances of the case¹¹.

If a solicitor fails to comply with a direction so given by the LCS any person may make a complaint in respect of that failure to the Solicitors Disciplinary Tribunal, but no other proceedings whatsoever may be brought in respect of such failure¹². Where the Tribunal is considering, or has considered, an application or complaint with respect to a solicitor and it is of the opinion that the LCS should consider whether to take any of the steps set out in heads (1) to (4) above with respect to that solicitor, it must inform the LCS¹³.

The LCS may, by regulations made with the concurrence of the Secretary of State and the Master of the Rolls, make provision for the payment of such fee as may be prescribed by any client with respect to whom the LCS is asked to consider whether to take any of the steps set out above¹⁴. The fee must be repaid to the client if the LCS takes any of the steps in the matter with respect to which the fee was paid¹⁵. The LCS may also direct a solicitor in respect of whom it has taken any of those steps to pay to the LCS the amount of the fee so repayable by the LCS to the client¹⁶, and an amount calculated as the cost to it of dealing with the complaint, or which in the LCS's opinion represents a reasonable contribution towards that cost¹⁷.

These provisions also apply, with certain exceptions, to inadequate professional services provided by a recognised body¹⁸.

1 The Solicitors Act 1974 s 37A and Sch 1A (as added by the Courts and Legal Services Act 1990 Sch 15) are repealed by the Legal Services Act 2007 Sch 16 para 78, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 Sch 1A refers to the 'Council' (ie the Council of the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1)). However in practice the body currently responsible for such matters is the Legal Complaints Service (see PARA 632 et seq). 'Charter' means the Royal Charter dated 26 February 1845, whereby the Society was incorporated, together with the Royal Charters supplemental to it dated respectively 26 November 1872, 4 June 1903, 2 June 1909 and 10 March 1954: Solicitors Act 1974 s 87(1).

3 As to the meaning of 'client' see PARA 835 note 6.

4 Solicitors Act 1974 s 37A, Sch 1A para 1(1) (as added: see note 1). There is, however, no statutory definition of 'inadequate professional services' for these purposes. In determining whether in any case it is appropriate to take any of the steps the LCS may have regard to:

253 (1) the existence of any remedy that could reasonably be expected to be available to the client in civil proceedings (Sch 1A para 1(3)(a) (as so added)); and

254 (2) whether it would be reasonable to expect the client to begin proceedings seeking any such remedy where the client has not done so (Sch 1A para 1(3)(b) (as so added)).

The power of the LCS to take any such steps is not confined to cases where the client may have a cause of action against the solicitor for negligence: Sch 1A para 2(3) (as so added).

The LCS's powers under Sch 1A (as so added) are exercisable in relation to a person even though his name has been removed from or struck off the roll, and references to a solicitor in Sch 1A (as so added) so far as they relate to the exercise of those powers are to be construed accordingly: Sch 1A para 9 (as so added).

5 As to the meaning of 'costs' see PARA 835 note 6.

6 The permitted requirements are:

255 (1) that the whole or part of any amount already paid by or on behalf of the client in respect of the costs be refunded (Solicitors Act 1974 Sch 1A para 2(2)(a) (as added: see note 1));

256 (2) that the whole or part of the costs be remitted (Sch 1A para 2(2)(b) (as so added));

257 (3) that the right to recover the costs be waived, whether wholly or to any specified extent (Sch 1A para 2(2)(c) (as so added)).

7 Solicitors Act 1974 Sch 1A para 2(1)(a) (as added: see note 1). Where the LCS has given a direction under Sch 1A para 2(1)(a) (as so added) then:

258 (1) for the purposes of any assessment of a bill covering those costs the amount charged by the bill in respect of those costs is deemed to be limited to the amount specified in the LCS's determination (Sch 1A para 4(1)(a) (as so added)); and

259 (2) where a bill covering those costs has not been assessed, then, for the purposes of the recovery of those costs (by whatever means and notwithstanding any statutory provision or agreement), the client is deemed to be liable to pay in respect of them only the amount specified in the LCS's determination (Sch 1A para 4(1)(b) (as so added)).

Where a bill covering those costs has been assessed, the LCS's direction under Sch 1A para 2(1)(a) (as so added) ceases to have effect so far as relating to those costs: Sch 1A para 4(2) (as so added). As to the assessment of costs see PARA 967 et seq.

8 Solicitors Act 1974 Sch 1A para 2(1)(b) (as added: see note 1).

9 Solicitors Act 1974 Sch 1A para 2(1)(c) (as added: see note 1). The amount of compensation specified must not exceed £15,000: Sch 1A para 3(1) (as so added; amended by SI 2005/2749). The Secretary of State, after consultation with the LCS, may by order made by statutory instrument substitute such other sum as he considers appropriate: Sch 1A para 3(2) (as so added; amended by SI 2003/1887).

10 Solicitors Act 1974 Sch 1A para 2(1)(d) (as added: see note 1).

11 Solicitors Act 1974 Sch 1A para 1(2) (as added: see note 1).

12 Solicitors Act 1974 Sch 1A para 5(1) (as added: see note 1). On the hearing of such a complaint relating to a direction given by the LCS, the Tribunal may, if it thinks fit, and whether or not it makes any order on the

hearing under s 47(2) (see PARA 909), direct that the LCS's direction be treated, for the purposes of enforcement, as if it were contained in an order made by the High Court: Sch 1A para 5(2) (as so added).

13 Solicitors Act 1974 Sch 1A para 8 (as added: see note 1).

14 Solicitors Act 1974 Sch 1A para 6(1) (as added (see note 1); amended by SI 2003/1887). The regulations may exempt prescribed classes of client: Sch 1A para 6(2), (4) (as so added).

15 Solicitors Act 1974 Sch 1A para 6(3) (as added: see note 1). At the date at which this volume states the law, no such regulations had been made.

16 le under the Solicitors Act 1974 Sch 1A para 6(3) (as added: see note 1).

17 Solicitors Act 1974 Sch 1A para 7 (as added: see note 1).

18 In the Solicitors Act 1974 Sch 1A (as added: see note 1), except paras 5(1) and 9 (as so added), any reference:

260 (1) to a solicitor is to be construed as including a reference to a recognised body; and

261 (2) to professional services provided by a solicitor in connection with any matter in which he or his firm had been instructed by a client is to be construed as including a reference to professional services provided by a recognised body in connection with any matter in which it had been instructed by a client: Administration of Justice Act 1985 Sch 2 para 13(1) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 56(a)).

The powers conferred on the LCS by the Solicitors Act 1974 Sch 1A para 2(1)(a) (as so added) are exercisable in relation to a body corporate in accordance with these provisions notwithstanding that it is no longer a recognised body: Administration of Justice Act 1985 Sch 2 para 13(2) (amended by the Courts and Legal Services Act 1990 Sch 18 para 56(b); prospectively repealed by the Legal Services Act 2007 Sch 16 para 99, Sch 23). If a body corporate fails to comply with a direction given to it by the LCS by virtue of these provisions, any person may make a complaint in respect of that failure to the Tribunal; but no other proceedings whatever may be brought in respect of it: Administration of Justice Act 1985 Sch 2 para 13(3) (as so prospectively repealed). As to the meaning of 'recognised body' see PARA 687 note 3.

UPDATE

895 Redress for inadequate professional services

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 9--As to the position where a solicitor who has been declared bankrupt is ordered to pay compensation see *Casson v Law Society* [2009] EWHC 1943 (Admin), [2010] BPIR 49, [2009] All ER (D) 223 (Oct).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/896. Disciplinary powers of the Solicitors Regulation Authority.

896. Disciplinary powers of the Solicitors Regulation Authority.

As from a day to be appointed the following provisions have effect¹. The following apply where the Solicitors Regulation Authority² is satisfied that a solicitor or an employee of a solicitor has failed to comply with a requirement imposed by or by virtue of the Solicitors Act 1974 or any rules made by the Authority³, or that there has been professional misconduct by a solicitor⁴. The Authority may give the person a written rebuke⁵, direct the person to pay a penalty not exceeding £2,000⁶, or both⁷. The Authority may publish details of any such action it has taken if it considers it to be in the public interest to do so⁸.

A person may appeal⁹ against:

- 1245 (1) a decision by the Authority to rebuke that person¹⁰ if a decision is also made to publish details of the rebuke¹¹;
- 1246 (2) a decision by the Authority to impose a penalty on that person¹² or the amount of that penalty¹³;
- 1247 (3) a decision by the Authority to publish details¹⁴ of any action taken against that person¹⁵.

On such an appeal, the Tribunal has power to make such order as it thinks fit, and such an order may in particular:

- 1248 (a) affirm the decision of the Authority¹⁶;
- 1249 (b) revoke the decision of the Authority¹⁷;
- 1250 (c) in the case of a penalty¹⁸, vary the amount of the penalty¹⁹;
- 1251 (d) in the case of a solicitor, contain certain provisions²⁰;
- 1252 (e) in the case of an employee of a solicitor, contain certain provisions²¹;
- 1253 (f) make such provision as the Tribunal thinks fit as to payment of costs²².

An appeal from the Tribunal lies to the High Court, at the instance of the Authority or the person in respect of whom the order of the Tribunal was made²³ and the High Court has power to make such order on an appeal as it may think fit²⁴. Any decision of the High Court on an appeal under the above provisions is final²⁵.

1 The Solicitors Act 1974 ss 44D, 44E are added by the Legal Services Act 2007 Sch 16 para 46 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 As to rules made by the Solicitors Regulation Authority see PARA 829.

4 Solicitors Act 1974 s 44D(1).

5 Solicitors Act 1974 s 44D(2)(a).

6 Solicitors Act 1974 s 44D(2)(b). A penalty imposed under the Solicitors Act 1974 s 44D(2) does not become payable until the end of the period during which an appeal against the decision to impose the penalty, or the amount of the penalty, may be made under s 44E or if such an appeal is made, such time as it is determined or withdrawn: s 44D(5). A penalty payable under s 44D may be recovered as a debt due to the Authority, and is to be forfeited to Her Majesty: s 44D(9). The amount of penalty may be amended by the Lord Chancellor by order after consultation: see s 44D(10)-(11).

7 See the Solicitors Act 1974 s 44D(2). Where the Authority takes action against a person directing them to pay a penalty under s 44D(2) or decides to publish details of any action taken it must notify the person in writing that it has done so: s 44D(4). The Authority must make rules:

262 (1) prescribing the circumstances in which the Authority may decide to take action under s 44D(2) (s 44D(7)(a));

263 (2) about the practice and procedure to be followed by the Authority in relation to such action (s 44D(7)(b));

264 (3) governing the publication under s 44D(3) of details of action taken under s 44D(2) (s 44D(7)(c));

and the Authority may make such other rules in connection with the exercise of its powers under s 44D as it considers appropriate: s 44D(7). Before making such rules, the Authority must consult the Tribunal: s 44D(8).

Section 44D is without prejudice to any power conferred on the Authority or any other person to make an application or complaint to the Tribunal: s 44D(13).

8 Solicitors Act 1974 s 44D(3). The Authority may not publish under s 44D(3) details of any action under s 44D(2):

265 (1) during the period within which an appeal against the decision to take the action, the amount of the penalty, or the decision to publish the details, may be made under s 44E (s 44D(6)(a)); or

266 (2) if such an appeal has been made, until such time as it is determined or withdrawn (s 44D(6)(b)).

9 The provisions of the Solicitors Act 1974 s 46(9)(b), (10)(a), (b), (11), (12) (Tribunal rules about procedure for hearings etc) apply in relation to appeals under s 44E as they apply in relation to applications or complaints, except that s 46(11) is to be read as if for 'the applicant' to 'application' there were substituted 'any party to the appeal': s 44E(2). Rules under s 46(9)(b) may, in particular, make provision about the period during which an appeal under this section may be made: s 44E(3).

10 Ie a decision to rebuke that person under the Solicitors Act 1974 s 44D(2)(a).

11 Solicitors Act 1974 s 44E(1)(a).

12 Ie a decision to impose a penalty under the Solicitors Act 1974 s 44D(2)(b).

13 Solicitors Act 1974 s 44E(1)(b).

14 Ie a decision to publish details under the Solicitors Act 1974 s 44D(3).

15 Solicitors Act 1974 s 44E(1)(c).

16 Solicitors Act 1974 s 44E(4)(a).

17 Solicitors Act 1974 s 44E(4)(b).

18 Ie a penalty imposed under the Solicitors Act 1974 s 44D(2)(a).

19 Solicitors Act 1974 s 44E(4)(c).

20 Solicitors Act 1974 s 44E(4)(d). The provisions mentioned in the text are s 47(2)(a)-(d) (see PARA 909).

21 Solicitors Act 1974 s 44E(4)(e). The provision mentioned in the text is s 47(2E) (see PARA 930). Where by virtue of s 44(4)(e) an order contains provision for any of the matters mentioned in s 47(2E)(c), then s 47(2F), (2G) apply as if the order had been made under s 47(2E)(c): s 44E(5).

22 Solicitors Act 1974 s 44E(4)(f).

23 Solicitors Act 1974 s 44E(6). Section 44E is without prejudice to any power conferred on the Tribunal in connection with an application or complaint made to it: s 44E(9).

24 Solicitors Act 1974 s 44E(7).

25 Solicitors Act 1974 s 44E(8).

UPDATE

896 Disciplinary powers of the Solicitors Regulation Authority

TEXT AND NOTE 1--Day appointed is 31 March 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/897. Disciplinary jurisdiction overseas.

897. Disciplinary jurisdiction overseas.

In territories overseas the position at common law is that the power of suspending from or disqualifying for practice is the corollary of the power of admitting to practice; accordingly it is exercisable, subject to local legislation, by the judges just as is the power of admission¹. In exercising this jurisdiction a judge exercises a disciplinary power² and does not sit as a court, although he is bound to act judicially and his decision is subject to appeal to Her Majesty in Council³. Where deceit or moral turpitude is alleged a high standard of proof is required⁴.

Practice carried on by an English solicitor as such from an office outside England and Wales is regulated by certain provisions of the Solicitors' Code of Practice 2007⁵.

1 *Re Antigua Justices* (1830) 1 Knapp 267 at 268, PC, cited in *A-G of Gambia v N' Jie* [1961] AC 617 at 630-631, [1961] 2 All ER 504 at 508, PC.

2 As to the principles to be borne in mind cf *Macauley v Sierra Leone Supreme Court Judges* [1928] AC 344 at 350, PC; *Grahame v A-G of Fiji* [1936] 2 All ER 992, PC (breach of trust by solicitor-trustee).

3 *A-G of Gambia v N' Jie* [1961] AC 617 at 631-632, [1961] 2 All ER 504 at 510, PC. See also *Wee v Law Society of Singapore* [1985] 1 WLR 362, PC; *Jeyaretnam v Law Society of Singapore* [1989] AC 608, [1989] 2 All ER 193, PC.

4 *Bhandari v Advocates Committee* [1956] 3 All ER 742, [1956] 1 WLR 1442, PC. The standard of proof to be applied in disciplinary proceedings concerning the legal profession is the criminal standard of proof: see *Campbell v Hamlet* [2005] UKPC 19, [2005] 3 All ER 1116, [2005] 4 LRC 342.

5 See the Solicitors Code of Conduct 2007 r 15.

UPDATE

897 Disciplinary jurisdiction overseas

NOTE 5--Solicitors' Code of Conduct 2007 r 15 amended on 31 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/898. Refusal of practising certificate or issue subject to conditions.

898. Refusal of practising certificate or issue subject to conditions.

Until a day to be appointed the following provisions have effect¹. In certain cases the Solicitors Regulation Authority² may in its discretion grant or refuse an application for a practising certificate, or issue a certificate subject to such terms and conditions as it may think fit³. The discretion arises where a solicitor applies for a practising certificate:

- 1254 (1) for the first time⁴; or
 - 1255 (2) not having held a practising certificate free of conditions since the date of his admission⁵; or
 - 1256 (3) when, on what would be the commencement date for the certificate, if it were granted, a period of 12 months or more will have elapsed since he held a practising certificate in force⁶; or
 - 1257 (4) after the Solicitors Disciplinary Tribunal has ordered a penalty or costs to be paid by him or that he be reprimanded⁷; or
 - 1258 (5) after he has been invited by the Solicitors Regulation Authority to give an explanation in respect of any matter relating to his conduct and has failed to give an explanation in respect of that matter which the Authority regards as sufficient and satisfactory and has been so notified in writing⁸; or
 - 1259 (6) when he has been required⁹ to deliver an accountant's report to the Authority and has not delivered it within the statutory¹⁰ period¹¹; or
 - 1260 (7) when, having been suspended from practice, the period of his suspension has expired¹²; or
 - 1261 (8) when having had his name removed from or struck off the roll it has been restored to the roll¹³; or
 - 1262 (9) while he is an undischarged bankrupt¹⁴; or
 - 1263 (10) after having been adjudged bankrupt and discharged or after having entered into a composition with his creditors or a deed of arrangement for their benefit¹⁵; or
 - 1264 (11) while he lacks capacity¹⁶ to act as a solicitor and certain powers¹⁷ are exercisable in relation to him¹⁸; or
 - 1265 (12) after having been committed to prison in civil or criminal proceedings¹⁹; or
 - 1266 (13) after having had given against him any judgment which involves the payment of money and not a judgment:
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- 44. (a) limited to the payment of costs; or
 - 45. (b) as to the whole effect of which upon him he is entitled to indemnity or relief from some other person; or
 - 46. (c) evidence of the satisfaction of which has been produced to the Authority²⁰.
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In any cases where any of these circumstances exist the solicitor must, unless the Authority or the Master of the Rolls otherwise orders, give to the Authority at least six weeks' notice of intention to apply for a practising certificate²¹. If in any such case the Authority decides to issue

a certificate subject to conditions, it may if it thinks fit postpone the issue of the certificate pending the hearing and determination of any appeal against its decision²².

The Authority may not refuse an application by a solicitor for a practising certificate in a case where a discretion is exercisable by reason only that he is applying for the first time or that he has not held a practising certificate free from conditions since the date of his admission²³. In such cases as are mentioned in heads (9), (12) and (13) above where an appeal has been made to the appropriate court against the order or judgment in question, the Authority must not refuse an application before the determination of that appeal unless in the Authority's opinion the proceedings on that appeal have been unduly protracted by the appellant or are unlikely to be successful²⁴.

Where a discretion becomes exercisable by reason of any of the circumstances mentioned in heads (4) to (8), (10), (12) or (13) above, then, as soon as a certificate has been issued to the applicant free of conditions, the facts which gave rise to the discretion cease to operate so as to require him to give extended notice of application or so as to vest any discretion in the Authority²⁵.

1 The Solicitors Act 1974 ss 12, 12A are repealed by the Legal Services Act 2007 Sch 16 para 13, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 12 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for issuing practising certificates is the Solicitors Regulation Authority (see PARA 619).

3 See the Solicitors Act 1974 s 12(4)(a), (b). As to the imposition of conditions on existing practising certificates see PARA 899. Conditions may be imposed requiring the applicant to take any specified steps which will, in the Law Society's opinion, be conducive to his carrying on an efficient practice as a solicitor, and notwithstanding that they may result in expenditure being incurred by the applicant: s 12(4A) (added by the Administration of Justice Act 1985 s 4(1), (4)).

4 Solicitors Act 1974 s 12(1)(a).

5 Solicitors Act 1974 s 12(1)(b). See also s 12(6); and the text and note 23.

6 Solicitors Act 1974 s 12(1) (c) (amended by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 9).

7 Solicitors Act 1974 s 12(1)(d). As to professional discipline see PARA 906 et seq.

8 Solicitors Act 1974 s 12(1)(e) (amended by the Administration of Justice Act 1985 s 4(1), (2)).

9 ie by the Solicitors Act 1974 s 34(1): see PARA 847.

10 ie within the period allowed by Solicitors Act 1974 s 34(2): see PARA 847.

11 Solicitors Act 1974 s 12(1)(ee) (added by the Administration of Justice Act 1985 s 4(1), (2)). Where a solicitor applies for a practising certificate at a time when these circumstances apply to him, he must pay an additional fee to the Authority when making his application, the amount of which must be fixed by order by the Master of the Rolls made with the concurrence of the Secretary of State and the Lord Chief Justice and designed to provide reasonable compensation to the Authority for the additional costs of dealing with such applications: Solicitors Act 1974 s 12A(1), (2) (added by Courts and Legal Services Act 1990 s 88).

12 Solicitors Act 1974 s 12(1)(f). Where a solicitor's practising certificate is suspended by virtue of s 15(1) (see PARA 904 notes 3-4) by reason of his suspension from practice and the suspension of his practising certificate is terminated unconditionally under s 16(4) or (5) (see PARA 904), then, notwithstanding s 12(1)(f), s 12 does not thereafter have effect in relation to that solicitor by reason of that suspension from practice and the expiry of the period of that suspension: s 12(3).

13 Solicitors Act 1974 s 12(1)(g). As to restoration to the roll see PARA 907.

14 Solicitors Act 1974 s 12(1)(h) (amended by the Insolvency Act 1985 s 235, Sch 8 para 25). As to a change of solicitor on a solicitor's bankruptcy see PARA 784.

- 15 Solicitors Act 1974 s 12(1)(i) (as amended: see note 14).
- 16 As to the meaning of 'lacks capacity' see the Mental Capacity Act 2005; **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.
- 17 The powers under the Mental Capacity act 2005 ss 15-20, 48 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARAS 751, 756-760.
- 18 Solicitors Act 1974 s 12(1)(j) (substituted by the Mental Capacity Act 2005 Sch 6 para 22(2)).
- 19 Solicitors Act 1974 s 12(1)(k).
- 20 Solicitors Act 1974 s 12(1)(l). As to the meaning of 'costs' see PARA 835 note 6.
- 21 See Solicitors Act 1974 s 12(4); and PARA 668.
- 22 Solicitors Act 1974 s 12(5). As to appeals see s 13(2)(b); and PARA 900.
- 23 Solicitors Act 1974 s 12(6). In a case falling within s 12(1)(b) (see head (2) in the text), the certificate must not be made subject to any conditions binding on the applicant in respect of any period more than three years after the date on which the first practising certificate issued to him had effect: s 12(6).
- 24 Solicitors Act 1974 s 12(7).
- 25 Solicitors Act 1974 s 12(2) (amended by the Administration of Justice Act 1985 s 4(1), (3)).

UPDATE

898-905 Refusal of practising certificate or issue subject to conditions ... Power to make rules providing for appeals to go to the Tribunal

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

898-899 Refusal of practising certificate or issue subject to conditions, Conditions imposed on current practising certificates

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/899. Conditions imposed on current practising certificates.

899. Conditions imposed on current practising certificates.

The Solicitors Regulation Authority¹ may direct that any solicitor's practising certificate for the time being in force (the 'current certificate') has effect subject to such conditions as it thinks fit². However a solicitor in whose case a direction is given imposing such conditions may appeal³.

Until a day to be appointed the following provisions have effect⁴. The power to give such a direction in the case of any solicitor is exercisable by the Authority at any time during the period for which the current certificate is in force if:

- 1267 (1) in the event of an application for a practising certificate being made by him at that time, the provisions⁵ relating to the issue of a practising certificate subject to conditions would have effect in relation to him by reason of certain circumstances⁶; or
- 1268 (2) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or
- 1269 (3) he has been charged with, or convicted of, an offence involving dishonesty or deception or an indictable offence⁷.

The conditions specified in a direction under these provisions have effect as from the time when the solicitor concerned is notified of the Authority's decision to give the direction⁸; but the Authority may, if it thinks fit, provide in such a direction that the conditions specified in it are not to have effect pending the hearing and determination of any appeal⁹ against the decision to give the direction¹⁰.

As from a day to be appointed the following provisions have effect¹¹. The power to give such a direction¹² is exercisable in relation to a solicitor at any time during the period for which the solicitor's current certificate is in force if the Authority grants a sole solicitor endorsement¹³ or it appears to the Authority that the case is of a prescribed¹⁴ description¹⁵. A solicitor who holds a practising certificate subject to a condition so imposed which prohibits that solicitor from taking any steps specified in the condition, except with the approval of the Authority, may appeal to the High Court against any decision by the Authority to refuse to approve the taking of any step for the purposes of that condition¹⁶. On an appeal under these provisions the High Court may:

- 1270 (a) affirm the decision of the Authority;
- 1271 (b) direct the Authority to approve the taking of one or more steps for the purposes of the condition;
- 1272 (c) make such other order as the High Court thinks fit¹⁷.

1 The Solicitors Act 1974 s 13A (as added by the Administration of Justice Act 1985 s 5) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for issuing practising certificates is the Solicitors Regulation Authority (see PARA 619).

2 Solicitors Act 1974 s 13A(1) (as added: see note 1). Until a day to be appointed the Solicitors Act 1974 s 12(4A) (see PARA 898) applies for the purposes of s 13A(1) as it applies for the purposes of s 12(4)(b): s 13A(8) (as so added; prospectively substituted by the Legal Services Act 2007 Sch 16 paras 16(6)). As from a day to be

appointed the provisions of the Solicitors Act 1974 s 10(4), (5) apply for the purposes of s 13A(1) as they apply for the purposes of s 10: s 13A(8) (as so prospectively substituted).

3 Such an appeal is made to the Master of the Rolls within one month of being notified: Solicitors Act 1974 s 13A(6) (as added: see note 1). On an appeal under s 13A(6) the decision may be affirmed, or the appellant's current certificate may have effect subject to conditions, the direction may be revoked or such other order may be made: see s 13A(7) (as so added). However as from a day to be appointed such an appeal is instead to be made to the High Court and s 13A(6), (7) are accordingly amended by the Legal Services Act 2007 Sch 16 para 16(3). Furthermore the Authority may make rules providing that appeals under the Solicitors Act 1974 s 13A(6) lie to the Tribunal and not to the High Court: see s 49A(1), (2)(b) (not yet in force); and PARA 905. The decision of the High Court on an appeal under the Solicitors Act 1974 s 13A(6) is final: s 13A(7A) (prospectively added by the Legal Services Act 2007 Sch 16 para 16(5)) At the date at which this volume states the law no such days had been appointed. As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918.

4 The Solicitors Act 1974 s 13A(2), (3) is substituted and s 13A(4), (5) repealed by the Legal Services Act 2007 Sch 16 para 16(2). The Solicitors Act 1974 s 13A(8)-(12) is added by the Legal Services Act 2007 Sch 16 para 16(5)-(7).

5 le the Solicitors Act 1974 s 12: see PARA 898.

6 le the circumstances mentioned in the Solicitors Act 1974 s 12(1)(d), (e), (ee), (k) or (l): see PARA 898 heads (4)-(6), (12)-(13).

7 Solicitors Act 1974 s 13A(2) (as added (see note 1); amended by the Insolvency Act 1985 s 235(3), Sch 10 Pt III; the Courts and Legal Services Act 1990 s 94(1); the Serious Organised Crime and Police Act 2005 Sch 7 para 42(1), (2); and prospectively substituted (see note 4)).

Until a day to be appointed, where there is pending against any judgment or order an appeal by the solicitor which, if successful, would result in the Solicitors Act 1974 s 13A(2) no longer being applicable to him, the Authority must not give a direction in his case as long as the appeal is pending, unless, in the Authority's opinion, the proceedings on that appeal have been unduly protracted by him or are unlikely to be successful; but this provision does not apply to the exercise of the Authority's powers by virtue of head (3) in the text: s 13A(5) (as added (see note 1); amended by the Courts and Legal Services Act 1990 s 94(2); and prospectively substituted (see note 4)).

8 Solicitors Act 1974 s 13A(3) (as added (see note 1); and prospectively substituted (see note 4)).

9 le under Solicitors Act 1974 s 13A(6) (as added: see note 1).

10 Solicitors Act 1974 s 13A(4) (as added (see note 1); prospectively repealed by the Legal Services Act 2007 Sch 16 para 16(2)).

11 See note 4.

12 le a direction under the Solicitors Act 1974 s 13A(1).

13 le under the Solicitors Act 1974 s 13ZA (see PARA 674).

14 'Prescribed' means prescribed by regulations under the Solicitors Act 1974 s 28: s 13A(3) (as added (see note 1); and prospectively substituted (see note 4)).

15 Solicitors Act 1974 s 13A(2) (as added (see note 1); and prospectively substituted (see note 4)).

16 Solicitors Act 1974 s 13A(9) (as added: see note 1).

17 Solicitors Act 1974 s 13A(10) (as added: see note 1). The decision of the High Court is final: s 13A(11) (as so added). In relation to an appeal under s 13A the High Court may make such order as it thinks fit as to payment of costs: s 13A(12) (as so added).

UPDATE

898-905 Refusal of practising certificate or issue subject to conditions ... Power to make rules providing for appeals to go to the Tribunal

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

**898-899 Refusal of practising certificate or issue subject to conditions,
Conditions imposed on current practising certificates**

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/900. Appeal against refusal of practising certificate.

900. Appeal against refusal of practising certificate.

Until a day to be appointed the following provisions have effect¹. Where an application for a practising certificate² is duly made to the Solicitors Regulations Authority³ otherwise than in a case where the Authority has a discretion in respect of its issue⁴ and the Authority refuses or neglects to issue a certificate, the applicant may apply to the High Court or to any judge of that court, or to the Master of the Rolls, who may make such an order as may be just, including an order for the payment of costs by or to the Authority or the applicant⁵.

In a case where the Authority has a discretion in respect of the issue of a practising certificate and the Authority either refuses to grant a certificate or decides to issue a certificate subject to a condition, the applicant may appeal to the Master of the Rolls within one month of being notified of the decision⁶. On such an appeal, the Master of the Rolls may:

- 1273 (1) affirm the decision of the Authority; or
- 1274 (2) direct the Authority to issue a certificate to the applicant free from conditions or subject to such conditions, other than training conditions⁷ or indemnity conditions⁸, as he thinks fit; or
- 1275 (3) direct the Authority not to issue a certificate; or
- 1276 (4) if a certificate has been issued, by order suspend it; or
- 1277 (5) make such other order as he thinks fit⁹.

Where the Authority issues a practising certificate subject to a training condition or indemnity condition¹⁰ the applicant may appeal within one month of being notified of the decision to the Master of the Rolls¹¹, who may:

- 1278 (a) affirm the decision of the Authority; or
- 1279 (b) direct the Authority to issue a certificate to the applicant free from conditions; or
- 1280 (c) if regulations¹² specify a number of training conditions or indemnity conditions, direct the Authority to issue a certificate to the applicant subject to a different training condition or indemnity condition from that subject to which it was originally issued¹³.

As from a day to be appointed the following provisions have effect¹⁴. A person who makes an application for a practising certificate¹⁵ may appeal to the High Court against a decision to refuse the application for a practising certificate, if the application included an application for a sole solicitor endorsement, a decision to refuse the application for the endorsement, or a decision to impose a condition on a practising certificate issued in consequence of the application¹⁶. On such an appeal the High Court may:

- 1281 (i) affirm the decision of the Authority;
- 1282 (ii) direct the Authority to make a sole solicitor endorsement on the applicant's practising certificate and to issue that certificate subject to such conditions (if any) as the High Court may think fit;

- 1283 (iii) direct the Authority to issue a certificate to the applicant free from conditions or subject to such conditions as the High Court may think fit;
- 1284 (iv) direct the Authority not to issue a certificate;
- 1285 (v) if a certificate has been issued, by order suspend it;
- 1286 (vi) if the certificate has been endorsed with a sole solicitor endorsement, by order suspend the endorsement; or
- 1287 (vii) make such other order as the High Court thinks fit¹⁷.

A person who holds a practising certificate subject to a condition prohibiting him from taking specified steps without the approval of the Authority¹⁸ may appeal to the High Court against any decision by the Authority to refuse to approve the taking of any step for the purposes of that condition¹⁹. On such an appeal the High Court may:

- 1288 (A) affirm the decision of the Authority;
- 1289 (B) direct the Authority to approve the taking of one or more steps for the purposes of a condition²⁰; or
- 1290 (C) make such other order as the High Court thinks fit²¹.

The High Court may make such order as it thinks fit as to payment of costs and the decision of the High Court on an appeal under the above provisions is final²².

1 The Solicitors Act 1974 s 13 is substituted by the Legal Services Act 2007 Sch 16 para 14 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the necessity for a practising certificate see PARA 667.

3 The Solicitors Act 1974 s 13 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for issuing practising certificates is the Solicitors Regulation Authority (see PARA 619).

4 Ie where the Solicitors Act 1974 s 12 has effect: see PARA 898.

5 Solicitors Act 1974 s 13(1). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918. No action lies against the Law Society (now the Authority) for refusing to issue a practising certificate without proving malice (*Newson v the Law Society* (1912) 57 Sol Jo 80, CA), and a vexatious action may be stayed (*Nicholson v Incorporated Law Society* (1879) 67 LT Jo 80).

6 Solicitors Act 1974 s 13(2)(b) (amended by the Administration of Justice Act 1985 s 8, Sch 1 para 5). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918.

7 As to the meaning of 'training condition' see PARA 671 note 2.

8 As to the meaning of 'indemnity condition' see PARA 671 note 2.

9 Solicitors Act 1974 s 13(4).

10 Ie in the exercise of powers conferred on the Authority by Solicitors Act 1974 s 10: see PARA 669.

11 Solicitors Act 1974 s 13(2)(a) (amended by the Administration of Justice Act 1985 Sch 1 para 5). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918.

12 Ie regulations under the Solicitors Act 1974 s 28.

13 Solicitors Act 1974 s 13(3).

14 See note 1.

15 Ie an application under the Solicitors Act 1974 s 9.

16 Solicitors Act 1974 s 13(1) (as prospectively substituted: see note 1). The Authority may make rules which provide, as respects any application under s 9 that is neither granted nor refused by the Authority within such period as maybe specified in the rules, for enabling an appeal to be brought under s 13 in relation to the application as if it had been refused by the Authority: s 13(3) (as so prospectively substituted).

17 Solicitors Act 1974 s 13(4) (as prospectively substituted: see note 1).

18 Is a condition within the Solicitors Act 1974 s 10(4)(b) (see PARA 669).

19 Solicitors Act 1974 s 13(2) (as prospectively substituted: see note 1).

20 Is a condition within the Solicitors Act 1974 s 10(4)(b) (see PARA 669).

21 Solicitors Act 1974 s 13(5) (as prospectively substituted: see note 1).

22 See the Solicitors Act 1974 s 13(6), (7) (as prospectively substituted: see note 1).

UPDATE

898-905 Refusal of practising certificate or issue subject to conditions ... Power to make rules providing for appeals to go to the Tribunal

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/901. Suspension of practising certificate; in general.

901. Suspension of practising certificate; in general.

An order of the Solicitors Disciplinary Tribunal or the High Court suspending a solicitor from practice suspends the solicitor's practising certificate from the relevant date of or referred to in the order, and an adjudication in bankruptcy suspends the practising certificate immediately¹.

Where the Solicitors Regulation Authority² has exercised:

- 1291 (1) its power to vest specified sums of money in itself³; or
- 1292 (2) the power to take possession of solicitor's documents⁴,

in a case where Authority suspects dishonesty on the part of a solicitor⁵, or is satisfied that a solicitor has failed to comply with the accounts rules (or as from a day to be appointed the rules as to professional practice, conduct and discipline)⁶, or where the solicitor has been committed to prison in any civil or criminal proceedings⁷, the practising certificate of that solicitor is immediately suspended⁸. The suspension does not, however, apply to the solicitor if the Authority so directs⁹. Alternatively, if the Authority gives a direction to that effect, the solicitor may continue to act in relation to any matter specified in the direction as if his practising certificate had not been so suspended, but subject to any conditions which the Authority may see fit to impose¹⁰.

The suspension of a practising certificate continues until the certificate expires, and where on the replacement date for a certificate, it is suspended, it will expire on that date¹¹. The suspension of a practising certificate by reason of a bankruptcy order terminates if the order is annulled and an office copy of the annulment order has been served upon the Authority¹². The Authority may inspect the file of proceedings in bankruptcy¹³.

Where a solicitor's practising certificate is suspended by order¹⁴ or because of the solicitor's bankruptcy¹⁵, the Authority must publish notice of the suspension and enter a note of it against the solicitor's name in the roll¹⁶.

During suspension the certificate is deemed not to be in force¹⁷, and the solicitor is accordingly deemed to be an unqualified person¹⁸.

1 See the Solicitors Act 1974 s 15(1).

2 The Solicitors Act 1974 ss 15-17 refer to the 'Society' (ie the Law Society: see s 87(1); and PARA 602 note 4). However in practice the body responsible for issuing practising certificates is the Solicitors Regulation Authority (see PARA 619).

3 Ie the power conferred by the Solicitors Act 1974 Sch 1 para 6(1) (see PARA 892) or as from a day to be appointed the power conferred by Sch 1 para 6A(1) (see PARA 892).

4 Ie the power conferred by the Solicitors Act 1974 Sch 1 para 9(1): see PARA 891.

5 Ie by virtue of the Solicitors Act 1974 Sch 1 para 1(1)(a)(i), (c) (and as from a day to be appointed Sch 1 para 1(1)(aa)) (see PARA 890). The suspected 'dishonesty' need not necessarily be such as to cause financial loss to any person: see *Re a Solicitor (No S2700 of 1995)* (1995) Times, 11 July.

6 Ie by virtue of the Solicitors Act 1974 Sch 1 para 1(1)(c) so far as it applies to rules made by virtue of s 32 (see PARAS 835, 846) or as from a day to be appointed by virtue of s 31 (see PARA 828).

7 le by virtue of Solicitors Act 1974 Sch 1 para 1(1)(e): see PARA 890.

8 Solicitors Act 1974 s 15(1A) (s 15(1A)-(1C) added by the Courts and Legal Services Act 1990 s 91(2); Solicitors Act 1974 s 15(1A) prospectively amended by the Legal Services Act 2007 Sch 16 para 19 (see text and notes 3-6)).

9 Solicitors Act 1974 s 15(1B) (as added: see note 8).

10 Solicitors Act 1974 s 15(1C) (as added: see note 8).

11 Solicitors Act 1974 s 16(1) (substituted by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 10(2)). However as from a day to be appointed the Solicitors Act 1974 s 16(1) is substituted by the Legal Services Act 2007 Sch 16 para 20(2) so that where a practising certificate is suspended, it expires on such a date as may be prescribed by regulations under the Solicitors Act 1974 s 28.

12 Solicitors Act 1974 s 16(2).

13 See Solicitors Act 1974 s 83; and PARA 625.

14 le under Solicitors Act 1974 s 15(1): see the text and note 1.

15 le under Solicitors Act 1974 s 13(4): see PARA 900.

16 Solicitors Act 1974 s 17(1) (amended by the Legal Services Act 2007 Sch 16 para 21, Sch 23). Nothing in the Solicitors Act 1974 s 17 applies to:

267 (1) the Treasury Solicitor;

268 (2) the solicitor to any other public department;

269 (3) the solicitor to the Church Commissioners;

270 (4) the solicitor to the Duchy of Cornwall;

271 (5) any clerk of officer appointed act for any of the above; or

272 (6) the Solicitor of the City of London (s 193(1), (4)).

17 Solicitors Act 1974 s 15(2).

18 See Solicitors Act 1974 s 1(c). As to the meaning of 'unqualified person' see PARA 642 note 12; and as to offences relating to unqualified persons see PARA 589 et seq.

UPDATE

898-905 Refusal of practising certificate or issue subject to conditions ... Power to make rules providing for appeals to go to the Tribunal

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

901 Suspension of practising certificate; in general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/902. Suspension of sole solicitor endorsement; in general.

902. Suspension of sole solicitor endorsement; in general.

As from a day to be appointed the following provisions apply¹. The making by the Solicitors Disciplinary Tribunal or by the court of an order suspending a solicitor from practice as a sole solicitor must operate to suspend any sole solicitor endorsement² of that solicitor for the time being in force³.

Where a sole solicitor endorsement is suspended, it expires on such date as may be prescribed by regulations⁴. Under certain circumstances⁵ where a solicitor's sole solicitor endorsement is suspended the solicitor may at any time before the endorsement expires apply to the Solicitors Regulation Authority⁶ to terminate the suspension⁷. Where a solicitor's sole solicitor endorsement is so suspended⁸ the Authority must forthwith cause notice of that suspension to be published and a note of it to be entered against the name of the solicitor on the roll⁹.

1 The Solicitors Act 1974 ss 17A, 17B are added by the Legal Services Act 2007 Sch 16 para 22 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'sole solicitor endorsement' see PARA 673.

3 Solicitors Act 1974 s 17A(1). For the purposes of the Solicitors Act 1974, a sole solicitor endorsement is deemed not to be in force at any time while it is suspended: s 17A(2). This is subject to s 13ZA(2) (see PARA 674): s 17A(3).

4 Solicitors Act 1974 s 17B(1). The regulations mentioned in the text are regulations made under s 28: s 17B(2).

5 Ie where a solicitor's sole solicitor's endorsement is suspended by an order under s 13(4) (see PARA 900), or by virtue of s 17A(1) in circumstances where the period of that suspension expires before the date on which his endorsement will expire.

6 The Solicitors Act 1974 s 17B refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for issuing practising certificates is the Solicitors Regulation Authority (see PARA 619).

7 Solicitors Act 1974 s 17B(2). The provisions of s 16(4)-(7) (see PARA 904) apply in relation to an application under s 17B(2) as they apply in relation to an application under s 16(3): s 17B(3). Where any suspension is terminated by virtue of s 16(4) or (5), as applied by s 17B(3) the Authority must forthwith cause a note of that termination to be entered against the name of the solicitor on the roll and, if so requested in writing by the solicitor, a notice of it to be published: s 17B(5).

8 Ie by an order under the Solicitors Act 1974 s 13(4) or s 17A(1).

9 Solicitors Act 1974 s 17B(4).

UPDATE

898-905 Refusal of practising certificate or issue subject to conditions ... Power to make rules providing for appeals to go to the Tribunal

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/903. Suspension of practising certificate where solicitor convicted of fraud or serious crime.

903. Suspension of practising certificate where solicitor convicted of fraud or serious crime.

Where a solicitor has been convicted of an offence involving dishonesty or deception or an indictable offence, and the Solicitors Regulation Authority¹ has made an application to the Solicitors Disciplinary Tribunal² with respect to him, the Authority may direct that the solicitor's practising certificate be suspended for a specified period not exceeding six months³. The suspension will cease to have effect if, before the specified period expires, the Tribunal determines the Authority's application, the conviction is quashed or set aside, or the Authority withdraws its application to the Tribunal⁴. Where the specified period comes to an end without any of the preceding events having occurred, the Authority may direct that the suspension be continued for another specified period not exceeding six months⁵.

A solicitor may appeal to the Master of the Rolls against a direction under these provisions within one month of being notified of it⁶. On such an appeal, the Master of the Rolls may affirm the suspension, direct that the appellant's certificate is not to be suspended but have effect subject to conditions, revoke the direction, or make such other order as he thinks fit⁷.

1 The Solicitors Act 1974 s 13B (as added by the Courts and Legal Services Act 1990 s 94(3)) refers to the 'Law Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for issuing practising certificates is the Solicitors Regulation Authority (see PARA 619).

2 ie under the Solicitors Act 1974 s 47: see PARA 909.

3 Solicitors Act 1974 s 13B(1), (2) (as added (see note 1); and amended by the Serious Organised Crime and Police Act 2005 Sch 7 para 42(3)). Nothing in the Solicitors Act 1974 s 13B (as so added) is to be taken as in any way affecting the Tribunal's power to suspend a solicitor from practice: s 13B(6) (as so added). As from a day to be appointed s 13B(1), (6) are amended by the Legal Services Act 2007 Sch 16 para 17(a), (b) so that the Authority may also direct that a sole solicitor endorsement be suspended, and nothing in the Solicitors Act 1974 is to be taken as in any way affecting the Tribunal's power to suspend a solicitor from practice or from practice as a sole solicitor. At the date at which this volume states the law no such day had been appointed.

4 Solicitors Act 1974 s 13B(3) (as added: see note 1).

5 Solicitors Act 1974 s 13B(4) (as added: see note 1). A suspension may only be extended once under s 13B(4) (as so added): s 13B(5) (as so added).

6 Solicitors Act 1974 s 13B(7) (as added: see note 1). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918. As from a day to be appointed the Solicitors Act 1974 s 13B(7) is amended by the Legal Services Act 2007 Sch 16 para 17(c) so that an appeal is to the High Court. At the date at which this volume states the law no such day had been appointed.

7 Solicitors Act 1974 s 13B(8) (as added: see note 1). As from a day to be appointed such appeals are made to the High Court instead of the Master of the Rolls and the High Court may direct that the appellant's certificate or sole solicitor endorsement must not be suspended but that the appellant's certificate has effect subject to such conditions as it thinks fit, and s 13B(8) is amended accordingly by the Legal Services Act 2007 Sch 16 para 17(d). As from a day to be appointed in relation to an appeal under the Solicitors Act 1974 s 13B(7) the High Court may make such order as it thinks fit as to payment of costs and any decision of the High Court on an appeal under s 13B(7) is final: see s 13B(9), (10) (prospectively added by the Legal Services Act 2007 Sch 16 para 17(e)). At the date at which this volume states the law no such days had been appointed.

UPDATE

**898-905 Refusal of practising certificate or issue subject to conditions ...
Power to make rules providing for appeals to go to the Tribunal**

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

903 Suspension of practising certificate where solicitor convicted of fraud or serious crime

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/904. Termination of suspension of practising certificate.

904. Termination of suspension of practising certificate.

Where a solicitor's practising certificate¹ is suspended by:

- 1293 (1) an order²; or
- 1294 (2) the solicitor's bankruptcy³; or
- 1295 (3) his suspension from practice by an order of the Solicitors Disciplinary Tribunal or the High Court⁴ and the period of that suspension expires before the replacement date of the certificate⁵; or
- 1296 (4) his suspension from practice by virtue of the exercise of certain statutory powers⁶,

the solicitor may, at any time before the certificate expires, and in the case of bankruptcy, while the order remains in force, apply to the Solicitors Regulation Authority⁷ to terminate the suspension⁸. On such an application, the Authority may in its discretion by order terminate the suspension unconditionally or subject to such conditions as it thinks fit⁹ or it may refuse the application¹⁰. If it refuses the application or terminates the suspension subject to conditions, the solicitor may appeal against the Authority's decision to the Master of the Rolls¹¹, who may either affirm the decision¹² or terminate the suspension unconditionally or subject to such conditions as he thinks fit¹³.

When suspension has been terminated by annulment of a bankruptcy order and service upon the Authority of an office copy of the annulment order¹⁴, or terminated by the Authority on the solicitor's application¹⁵, or by the Master of the Rolls on appeal¹⁶, the Authority must forthwith enter a note of the termination against the solicitor's name in the roll¹⁷ and, if the solicitor so requests in writing, publish a notice of it¹⁸.

1 As to the necessity for a practising certificate see PARA 667.

2 Ie under the Solicitors Act 1974 s 13(4): see PARA 900.

3 Ie by virtue of Solicitors Act 1974 s 15(1) by reason of his bankruptcy: see PARA 901.

4 Ie by virtue of Solicitors Act 1974 s 15(1) by reason of his suspension from practice: see PARA 901.

5 As from a day to be appointed the words 'the date on which his certificate will expire' are replaced for the words 'the replacement date of the certificate': see the Solicitors Act 1974 s 16(3)(c) (prospectively amended by the Legal Services Act 2007 Sch 16 para 20(3)). At the date at which this volume states the law no such day had been appointed.

6 Ie by virtue of Solicitors Act 1974 s 15(1A) (see PARA 901).

7 The Solicitors Act 1974 s 16 refers to the 'Law Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for issuing practising certificates is the Solicitors Regulation Authority (see PARA 619).

8 Solicitors Act 1974 s 16(3) (amended by the Courts and Legal Services Act 1990 ss 91(3), 125(3), Sch 18 para 10(1), (3); and prospectively amended (see note 5)).

9 Solicitors Act 1974 s 16(4)(a). Where the suspension of the certificate is terminated unconditionally, a discretion does not vest in the Authority with respect to the issue of a practising certificate to that solicitor by virtue of that suspension: see s 12(3) (prospectively repealed); and PARA 898 note 11.

10 Solicitors Act 1974 s 16(4)(b).

11 See the Solicitors Act 1974 s 16(5). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918. As from a day to be appointed such appeals are made to the High Court and the High Court may make such orders as it thinks fit as to the payment of costs and its decision on an appeal is final: see the Solicitors Act 1974 s 16(5)-(7) (s 16(5) prospectively amended and s 16(6), (7) prospectively added by the Legal Services Act 2007 Sch 16 para 20(4), (5)). The Authority may make rules providing that appeals under the Solicitors Act 1974 s 16(5) lie to the Tribunal and not to the High Court: see s 49A(1), (2)(c) (not yet in force); and PARA 905. At the date at which this volume states the law no such days had been appointed.

12 Solicitors Act 1974 s 16(5)(a).

13 Solicitors Act 1974 s 16(5)(b). See also s 12(3); and PARA 898.

14 Ie under the Solicitors Act 1974 s 16(2): see PARA 901.

15 Ie under the Solicitors Act 1974 s 16(4).

16 Ie under the Solicitors Act 1974 s 16(5).

17 As to the meaning of the 'roll' see PARA 621.

18 Solicitors Act 1974 s 17(2) (amended by the Legal Services Act 2007 Sch 16 para 21, Sch 23).

UPDATE

898-905 Refusal of practising certificate or issue subject to conditions ... Power to make rules providing for appeals to go to the Tribunal

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary and Regulatory Powers of the Solicitors Regulation Authority/905. Power to make rules providing for appeals to go to the Tribunal.

905. Power to make rules providing for appeals to go to the Tribunal.

As from a day to be appointed¹ the Solicitors Regulation Authority² may, with the approval of the Solicitors Disciplinary Tribunal, make rules which provide that in such circumstances as may be prescribed by the rules an appeal in respect of:

- 1297 (1) a decision to remove a solicitor's name from the roll³;
- 1298 (2) a direction that the solicitor's practising certificate has effect subject to conditions⁴;
- 1299 (3) a decision to refuse an application to have a suspension of a practising certificate terminated or a decision to terminate the suspension subject to conditions⁵;
- 1300 (4) particular circumstances provided by regulations⁶;
- 1301 (5) a decision to refuse permission, or to grant permission subject to conditions, for a solicitor to employ or remunerate in connection with his practice a solicitor who is disqualified from practising as a solicitor⁷;
- 1302 (6) a refusal to register or renew the registration of a foreign lawyer, a refusal to terminate any suspension of a foreign lawyer, the imposing of conditions or failure to deal with any application for registration, renewal of registration or the termination of a suspension within a reasonable time⁸,

lies to the Tribunal and not to the High Court⁹.

1 The Solicitors Act 1974 s 49A is added by the Legal Services Act 2007 Sch 16 para 52 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 49A refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 ie an appeal under the Solicitors Act 1974 s 8(4) (see PARA 663).

4 ie an appeal under the Solicitors Act 1974 s 13A(6) (see PARA 899).

5 ie an appeal under the Solicitors Act 1974 s 16(5) (see PARA 904).

6 ie where regulations under the Solicitors Act 1974 s 28(3D) (see PARAS 662, 671) make provision for appeals.

7 ie an appeal under the Solicitors Act 1974 s 41(3) (see PARA 924).

8 ie an appeal under the Courts and Legal Services Act 1990 Sch 14 para 14 (see PARA 628).

9 Solicitors Act 1974 s 49A(1), (2). Any decision of the Tribunal on an appeal by virtue of rules made under s 49A is final: s 49A(3).

UPDATE

**898-905 Refusal of practising certificate or issue subject to conditions ...
Power to make rules providing for appeals to go to the Tribunal**

Day appointed in relation to these provisions is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iv) Disciplinary Proceedings before the Solicitors Disciplinary Tribunal/906. The Solicitors Disciplinary Tribunal.

(iv) Disciplinary Proceedings before the Solicitors Disciplinary Tribunal

906. The Solicitors Disciplinary Tribunal.

The Solicitors Disciplinary Tribunal¹ hears applications and complaints made by virtue of any provision of the Solicitors Act 1974 except so far as other provision is made by that Act or by regulations made under it². The Tribunal may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions³. The Tribunal may make rules about the procedure and practice to be followed in relation to the making, hearing and determination of applications and complaints⁴. The Tribunal has jurisdiction to hear and determine any legal aid complaint relating to the conduct of a solicitor and made to the Tribunal by or on behalf of the Solicitors Regulation Authority⁵. It also has jurisdiction to hear certain applications and complaints⁶ relating to recognised bodies⁷.

For the purposes of any application or complaint made to the Tribunal under the Solicitors Act 1974, the Tribunal may administer oaths, and the applicant or complainant and any person with respect to whom the application or complaint is made⁸ may issue writs of subpoena ad testificandum and duces tecum⁹.

1 As to the constitution of the Tribunal see PARA 629 et seq.

2 Solicitors Act 1974 s 46(1). As to jurisdiction, the Tribunal has found: (1) that a solicitor may be struck off the roll for misconduct outside the jurisdiction of the courts of England and Wales (in this case, Hong Kong) because his conduct must be above suspicion and there was no indication that his behaviour here would be any different from that abroad (*Re Oliver, Decision 4368* (1989) 86 LS Gaz (26 July) 62); and (2) it is not appropriate for the Tribunal to hear test cases to determine the construction of rules of conduct where these involve the anxiety attendant upon disciplinary proceedings being suffered by a solicitor (*Re A Solicitor, Decision 4373* (1989) 86 LS Gaz (26 July) 64). As to the jurisdiction of the Tribunal generally see PARA 907. The Tribunal must meet not less than once in each calendar year and must publish an annual report: see the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 3(4).

3 Solicitors Act 1974 s 46(5A) (added by the Legal Services Act 2007 Sch 16 para 47(3)).

4 See the Solicitors Act 1974 s 46(9)(b); and PARA 629.

5 Administration of Justice Act 1985 s 43(1). In the Solicitors Act 1974 s 46(7)-(11) any reference to a complaint or to a complaint made to the Tribunal under the Solicitors Act 1974 is to be construed as including a reference to a legal aid complaint or to a legal aid complaint made to the Tribunal under the Administration of Justice Act 1985 s 43 (see PARA 909): s 43(2).

6 Ie including any such application as is mentioned in the Administration of Justice Act 1985 Sch 2 para 11(1) (see PARA 926) or Sch 2 para 21(1) (see PARA 699) or any such complaint as is mentioned in Sch 2 para 13(3) (see PARA 895) or Sch 2 para 16(1) (see PARA 712): Sch 2 para 17(1)(a). As from a day to be appointed Sch 2 para 17(1)(a) is amended by the Legal Services Act 2007 Sch 16 para 105, Sch 23 to apply to applications as is mentioned in the Administration of Justice Act 1985 Sch 2 para 21(1) or any such complaint as is mentioned in Sch 2 para 16(1), (1A). At the date at which this volume states the law no such day had been appointed.

7 Administration of Justice Act 1985 Sch 2 para 17(1)(c). In the Solicitors Act 1974 s 46(7)-(11), any reference to an application or complaint made under that Act is to be construed as including a reference to any such application or complaint as made under the Administration of Justice Act 1985 Sch 2: Sch 2 para 17(1)(b). As from a day to be appointed the Tribunal also has jurisdiction to hear certain applications and complaints relating to the manager or employee of a recognised body: see Sch 2 para 17(1)(c) (prospectively amended by

the Legal Services Act 2007 Sch 16 para 105). At the date at which this volume states the law no such day had been appointed.

8 Or in the case of an application under the Solicitors Act 1974 s 47(1)(b) (see PARA 907), any of the parties to the application.

9 Solicitors Act 1974 s 46(11). However, no person may be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action: s 46(11).

UPDATE

906 The Solicitors Disciplinary Tribunal

NOTES 6, 7--References to Administration of Justice Act 1985 Sch 2 para 17(1)(a)-(c) should be to Sch 2 para 17(a)-(c).

Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iv) Disciplinary Proceedings before the Solicitors Disciplinary Tribunal/907. Jurisdiction in respect of disciplinary proceedings.

907. Jurisdiction in respect of disciplinary proceedings.

Any application:

- 1303 (1) to strike the name of a solicitor off the roll¹;
- 1304 (2) to require a solicitor to answer allegations contained in an affidavit²;
- 1305 (3) to require a former solicitor whose name has been removed from or struck off the roll to answer allegations contained in an affidavit relating to a time when he was a solicitor³;
- 1306 (4) by a solicitor who has been suspended from practice for an unspecified period, by order of the Solicitors Disciplinary Tribunal, for the termination of that suspension⁴;
- 1307 (5) by a former solicitor whose name has been struck off the roll to have his name restored to the roll⁵;
- 1308 (6) by a former solicitor in respect of whom a direction has been given⁶ to have his name restored to the roll⁷;
- 1309 (7) as from a day to be appointed, by a solicitor who has been suspended from practice as a sole solicitor for an unspecified period, by order of the Tribunal, for the termination of that suspension⁸,

must be made to the Tribunal⁹.

In addition to hearing and determining such applications, the Tribunal also hears and determines applications made by or on behalf of the Solicitors Regulation Authority¹⁰ in respect of solicitors' employees and consultants¹¹. In respect of orders made on such applications there is a right of appeal to the High Court¹².

1 Solicitors Act 1974 s 47(1)(a) (s 47(1), (2) substituted by the Courts and Legal Services Act 1990 s 92(1), (2)). An adverse application against a solicitor may be distinguished from a permissive application; the former is an application to strike a solicitor's name off the roll, and the latter is an application by a solicitor that his name be removed from the roll, and is made to the Solicitors Regulation Authority: see the Solicitors Act 1974 s 8(1); and PARA 663. See note 10.

2 Solicitors Act 1974 s 47(1)(b) (as substituted: see note 1). An application (whether made to the Solicitors Disciplinary Tribunal or to the High Court) to require a solicitor to answer allegations contained in an affidavit may be treated as an application to strike his name off the roll on the grounds of the matters alleged: s 55.

3 Solicitors Act 1974 s 47(1)(c) (as substituted: see note 1).

4 Solicitors Act 1974 s 47(1)(d) (as substituted: see note 1). As to suspension from practice see PARAS 901-903.

5 Solicitors Act 1974 s 47(1)(e) (as substituted: see note 1).

6 le under the Solicitors Act 1974 s 47(2)(g) (as substituted: see note 1): see PARA 909.

7 Solicitors Act 1974 s 47(1)(f) (as substituted: see note 1).

8 Solicitors Act 1974 s 47(1)(ea) (prospectively added by the Legal Services Act 2007 Sch 16 para 49(b)).

9 Solicitors Act 1974 s 46(1) (as substituted: see note 1). As to the orders which may be made see s 47(2); and PARA 909. However nothing in s 47(1) affects any jurisdiction over solicitors exercisable by the Master of the Rolls or by any judge of the High Court by virtue of s 50 (see PARA 745): s 47(1) (as so substituted).

10 The Solicitors Act 1974 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

11 See the Solicitors Act 1974 s 43; and PARA 926 et seq.

12 See the Solicitors Act 1974 s 49(1)(b); and PARA 917.

UPDATE

907 Jurisdiction in respect of disciplinary proceedings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

TEXT AND NOTE 8--Day appointed is 1 July 2009: SI 2009/1365.

NOTE 8--Reference to Legal Services Act 2007 Sch 16 para 49(b) should be to Sch 16 para 49(a).

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908. Applications to the Tribunal.

An application¹ to the Solicitors Disciplinary Tribunal² in respect of any allegation or complaint made in respect of a solicitor³, a recognised body⁴, a registered European lawyer⁵ or a registered foreign lawyer⁶ must be in the form as set out in the Solicitors (Disciplinary Proceedings) Rules 2007⁷.

In the case of an application by a person other than the Solicitors Regulation Authority, the Tribunal may, before or after certification of a case to answer, adjourn the matter for a period not exceeding three months to enable the Authority to carry out its own investigations and, if it thinks fit, initiate its own application or by agreement with the applicant, undertake the application⁸.

The applicant may file supplementary statements with the clerk containing additional facts or matters on which the applicant seeks to rely or further allegations and facts or matters in support of the application⁹. Without prejudice to any further application which may be made, no supplementary statement must, unless by order of the Tribunal, be filed later than 12 months after the date of the application or less than 30 days before the date fixed for the hearing of the application¹⁰.

1 'Application' means an application made under the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588: r 2(1).

2 As to the applications which may be made see PARAS 907, 923. An application to require a solicitor to answer allegations contained in an affidavit may be treated as an application to strike the name of the solicitor off the roll on the grounds of the matters alleged: see the Solicitors Act 1974 s 55; and PARA 907.

3 References in the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, to solicitors include where appropriate former solicitors: r 2(2).

4 As to the meaning of 'recognised body' see the Administration of Justice Act 1985 s 9; and PARA 687 note 3 (definition applied by the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 2(1)).

5 The Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, refer to the 'Law Society'. However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority. As to the meaning of 'registered European lawyer' see PARA 542 note 2.

6 As to the meaning of 'registered foreign lawyer' see PARA 628 note 2.

7 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 5(1). The application must be supported by a statement setting out the allegations and the facts and the matters supporting the application and each allegation contained in it: r 5(2). The application, the statement and any documents exhibited with them must be delivered to the clerk together with five additional copies and a further copy for any second or further respondent: r 5(3). 'Statement' means a written statement (including a witness statement) containing a statement of truth: r 2(1).

8 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 20.

9 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 7(1). Any supplementary statement containing further allegations against the respondent must be treated as though it were an application for the purposes of rr 5(3), 6(1)-(3), (5) (see PARA 911): r 7(1).

10 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 7(2).

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909. Powers of the Tribunal.

Subject to certain exceptions¹, on the hearing of any application² or complaint made to the Solicitors Disciplinary Tribunal³ the Tribunal may order:

- 1310 (1) the striking off the roll of the name of the solicitor to whom the application or complaint⁴ relates⁵;
- 1311 (2) the suspension of that solicitor from practice, either indefinitely or for a specified period⁶;
- 1312 (3) the payment by that solicitor of a penalty not exceeding £5,000⁷, which is forfeit to Her Majesty⁸;
- 1313 (4) in the specified circumstances⁹, the exclusion of that solicitor from providing representation funded by the Legal Services Commission as part of the Criminal Defence Service, either permanently or for a specified period¹⁰;
- 1314 (5) the termination of that solicitor's unspecified period of suspension from practice¹¹;
- 1315 (6) the restoration to the roll of the name of a former solicitor whose name has been struck off the roll and to whom the application relates¹²;
- 1316 (7) in the case of a former solicitor whose name has been removed from the roll, a direction prohibiting the restoration of his name to the roll except by order of the Tribunal¹³;
- 1317 (8) in the case of an application by a former solicitor in respect of whom a direction such as is mentioned in head (7) above has been given, the restoration of the applicant's name to the roll¹⁴;
- 1318 (9) the payment by any party of costs or a contribution towards costs of such amount as the Tribunal considers reasonable¹⁵.

As from a day to be appointed the Tribunal may also make the following orders:

- 1319 (a) the revocation of that solicitor's sole solicitor endorsement¹⁶ (if any)¹⁷;
- 1320 (b) the suspension of that solicitor from practice as a sole solicitor indefinitely or for a specified period¹⁸;
- 1321 (c) the termination of that solicitor's unspecified period of suspension from practice as a sole solicitor¹⁹.

On the hearing of a legal aid complaint against a solicitor the Tribunal may, if it thinks fit and whether or not it makes any other order on the hearing, order that any costs otherwise payable by the Legal Services Commission in connection with services provided by the solicitor as part of the Community Legal Service or Criminal Defence Service must be reduced or cancelled²⁰.

On proof of the commission of an offence with respect to which express provision is made by provision of the Solicitors Act 1974, the Tribunal must, without prejudice to its power of making an order as to costs, impose the punishment specified in that provision²¹.

¹ le subject to the Solicitors Act 1974 s 47(3) (see the text and notes 2-4) and s 54 (see PARA 664) and, as from a day to be appointed, s 47(2E): see s 47(2) (prospectively amended by the Legal Services Act 2007 Sch

16 para 49(b)). The Solicitors Disciplinary Tribunal, in assessing the penalty for delay in handling professional business where the respondent to the proceedings has previously been formally rebuked in respect of the delay by the conduct committee, is entitled to have regard to the total period of delay and is not restricted to consideration of the period after the respondent was rebuked: *Re Alun Thomas Richards, Decision 5220* (1993) 90 LS Gaz (20 October) 41, Solicitors Disciplinary Tribunal. As to the Tribunal see PARA 906.

2 le any application other than an application under the Solicitors Act 1974 s 43 (see PARA 926 et seq).

3 Unless there are exceptional circumstances, the Solicitors Disciplinary Tribunal should impose conditions itself, and not leave it to the Solicitors Regulation Authority: *R (on the application of Camacho) v Law Society* [2004] EWHC 1675 (Admin), [2004] 4 All ER 126, sub nom *Camacho v Law Society* [2004] All ER (D) 170 (Jul), DC.

4 Any reference in the Solicitors Act 1974 s 47(2) to a complaint or to a complaint made to the Tribunal under the Solicitors Act 1974 is to be construed as including a reference to a legal aid complaint or a legal aid complaint made to the Tribunal under the Administration of Justice Act 1985 s 43: s 43(2).

5 Solicitors Act 1974 s 47(2)(a) (substituted by the Courts and Legal Services Act 1990 s 92(1), (2)). As to the roll see PARA 621. Where a solicitor has been convicted of an offence involving fraud, or where there has been misappropriation of clients' money, the striking of the solicitor's name off the roll will almost certainly be ordered. However, suspension and striking off are inappropriate penalties where the solicitor has not acted dishonestly: *Re A Solicitor* (1976) 120 Sol Jo 353, DC. A solicitor should not be struck off for practising without a practising certificate as there would then be no suitable penalty left for more serious offences: *Re A Solicitor* (1976) 120 Sol Jo 117, DC. In considering the penalty regard must be had to the extent to which the existence of the standard of conduct laid down by the Tribunal was known and accepted at the time of default: see *Re A Solicitor* [1975] QB 475, [1974] 3 All ER 853, DC (need for independent advice). As to the consideration by the Tribunal of background information advanced in mitigation see *Yerolemou v Law Society* [2008] EWHC 682 (Admin), [2008] All ER (D) 136 (Mar).

6 Solicitors Act 1974 s 47(2)(b) (as substituted: see note 5).

7 Until a day to be appointed the penalty must not exceed £5,000 but if it appears to the Secretary of State that there has been a change in the value of money since the relevant date, he may by order made by statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament) substitute for this sum such other sum as appears to him to be justified by the change: see the Solicitors Act 1974 s 47(2)(c), (4) (s 47(2) as so substituted; s 47(4), (5) added by the Administration of Justice Act 1982 s 56; and s 47(2)(c) prospectively amended and s 47(4), (5) prospectively repealed by the Legal Services Act 2007 Sch 16 para 49(d), Sch 23). 'Relevant date' means (1) in relation to the first such order, 1 January 1983; and (2) in relation to each subsequent order, the last occasion when the sum so specified was altered: Solicitors Act 1974 s 47(5) (as so added and prospectively repealed). In exercise of the power so conferred, the Lord Chancellor made the Solicitors Disciplinary Tribunal (Increase in Penalty) Order 1990, SI 1990/1011, superseded by the Courts and Legal Services Act 1990 s 92(2). At the date at which this volume states the law, no further order increasing the amount of the penalty has been made.

8 Solicitors Act 1974 s 47(2)(c) (as substituted: see note 5).

9 le in the circumstances referred to in the Solicitors Act 1974 s 47(2A) (see PARA 910).

10 Solicitors Act 1974 s 47(2)(d) (as substituted (see note 5); amended by the Access to Justice Act 1999 Sch 4 para 10(2)). As to the Legal Services Commission and the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARAS 17 et seq, 31 et seq.

11 Solicitors Act 1974 s 47(2)(e) (as substituted: see note 5).

12 Solicitors Act 1974 s 47(2)(f) (as substituted: see note 5). An application under s 47 by:

273 (1) a former solicitor seeking restoration to the roll;

274 (2) a person seeking restoration to the register of European lawyers or the register of foreign lawyers if his name has been removed from either register;

275 (3) by a solicitor, registered foreign lawyer or registered European lawyer seeking the termination of an indefinite period of suspension from practice imposed by the Tribunal,

must be made in the form as set out in the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, Schedule, Form 4: see r 9(1)(a), (2).

The Solicitors Regulation Authority must be a respondent to every application to which r 9 applies: r 9(3). The applicant must serve on the Authority a copy of the application and a statement in support of the application: r 9(4). As to the service of documents under r 9 see r 10; and PARA 911 note 8. The Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, refer to the Law Society. However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

13 Solicitors Act 1974 s 47(2)(g) (as substituted: see note 5). As to the meaning of references to removal from the roll see PARA 662 note 6.

14 Solicitors Act 1974 s 47(2)(h) (as substituted: see note 5).

15 Solicitors Act 1974 s 47(2)(i) (as substituted: see note 5).

16 As to the meaning of 'sole solicitor endorsement' see PARA 673.

17 Solicitors Act 1974 s 47(ba) (s 47(ba), (bb) prospectively added by the Legal Services Act 2007 Sch 16 para 49(c)).

18 Solicitors Act 1974 s 47(bb) (as prospectively added: see note 17).

19 Solicitors Act 1974 s 47(ea) (prospectively added by the Legal Services Act 2007 Sch 16 para 49(e)).

20 Administration of Justice Act 1985 s 43(3) (amended by the Access to Justice Act 1999 Sch 4 paras 32, 36). As from a day to be appointed nothing in the Legal Services Act 2007 s 157 (see PARA 386) prevents an order being made under the Administration of Justice Act 1985 s 43(3): s 43(3A) (prospectively added by the Legal Services Act 2007 Sch 16 para 84(2)). At the date at which this volume states the law no such day had been appointed.

21 See the Solicitors Act 1974 s 47(3). This power is expressed to be without prejudice to the Tribunal's power to award costs: s 47(3). An order of the Tribunal is to be regarded as a punishment: see *Re A Solicitor* [1956] 3 All ER 516, [1956] 1 WLR 1312, DC. Where on the hearing of any application or complaint the Tribunal is satisfied that more than one allegation is proved against the person to whom the application or complaint relates, it may impose a separate penalty, by virtue of the Solicitors Act 1974 s 47(2)(c) (see head (3) in the text), with respect to each allegation: s 47(3A) (added by the Courts and Legal Services Act 1990 s 92(4)). As to the influence of a local society in suggesting an appropriate penalty see *Re Joe Gary Newman, Decision 5287* (1994) 91 LS Gaz (8 June) 28, Solicitors Disciplinary Tribunal. As from a day to be appointed, for the avoidance of doubt, nothing in the Solicitors Act 1974 s 47 permits the Tribunal to make an order requiring redress to be made in respect of any act or omission of any person: s 47(3B) (prospectively added by the Legal Services Act 2007 Sch 16 para 49(g)).

UPDATE

909 Powers of the Tribunal

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTES 1, 7--Day appointed is 31 March 2009: SI 2009/503.

TEXT AND NOTE 16--Day appointed is 1 July 2009: SI 2009/1365.

NOTES 17-19--References to Solicitors Act 1974 s 47(ba), (bb), (ea) should be to s 47(2)(ba), (bb), (ea).

NOTE 20--Reference to Legal Services Act 2007 Sch 16 para 84(2) should be to Sch 16 para 84(3).

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910. Exclusion of solicitor from providing services funded by the Legal Services Commission.

An order of the Solicitors Disciplinary Tribunal¹ may make provision for the exclusion of a solicitor from providing representation² where the Tribunal determines that there is good reason for doing so arising out of³:

- 1322 (1) his conduct, including conduct in the capacity of agent for another solicitor, in connection with the provision for any person of services funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Service⁴; or
- 1323 (2) his professional conduct generally⁵.

Where the Tribunal makes any such order as is referred to above in the case of a solicitor who is a member of a firm of solicitors, the Tribunal may, if it thinks fit, order that any other person who is for the time being a member of the firm is to be excluded, either permanently or for a specified period, from providing representation funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service⁶; but it may not do so unless an opportunity is given to the person to be so excluded to show cause why the order should not be made⁷. Similar provision is made in respect of an officer⁸ or employee of a recognised body⁹.

Any person excluded from providing representation funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service by an order under these provisions may make an application to the Tribunal for an order terminating his exclusion from such work¹⁰.

1 As to the Tribunal see PARA 906.

2 I.e. as mentioned in the Solicitors Act 1974 s 47(2)(d): see PARA 909.

3 Solicitors Act 1974 s 47(2A) (s 47(2A)-(2D) added by the Administration of Justice Act 1985 s 44(1), (3); amended by the Courts and Legal Services Act 1990 s 92(1), (3)).

4 Solicitors Act 1974 s 47(2A)(a) (as added (see note 3); substituted by the Legal Aid Act 1988 Sch 5 para 19; and amended by the Access to Justice Act 1999 Sch 4 para 10(3)(b)).

5 Solicitors Act 1974 s 47(2A)(b) (as added (see note 3); and substituted (see note 4)).

6 Solicitors Act 1974 s 47(2B) (as added (see note 3); and amended by the Access to Justice Act 1999 Sch 4 para 10(4)).

7 Solicitors Act 1974 s 47(2C) (as added (see note 3); and amended by the Access to Justice Act 1999 Sch 15 Pt I).

8 As to the meaning of 'officer' see PARA 708 note 9. As from a day to be appointed the words 'a manager' are substituted for the words 'an officer' by the Legal Services Act 2007 Sch 16 para 108(b). At the date at which this volume states the law no such day had been appointed.

9 See the Administration of Justice Act 1985 Sch 2 para 20(1), (2) (prospectively amended by the Legal Services Act 2007 Sch 108, Sch 23). As to the meaning of 'recognised body' see PARA 687 note 3.

10 Solicitors Act 1974 s 47(2D) (as added (see note 3); and amended by the Access to Justice Act 1999 Sch 15 Pt I).

UPDATE

910 Exclusion of solicitor from providing services funded by the Legal Services Commission

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 8--Day appointed is 31 March 2009: SI 2009/503.

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911. Preliminary consideration of an application.

Certain applications¹ must be considered by a solicitor member of the Solicitors Disciplinary Tribunal² who must certify whether there is a case to answer³. If the solicitor member is minded not to certify that there is a case to answer or, in his opinion, the case is one of doubt or difficulty, the application must be considered by a panel of three members of the Tribunal, at least one of whom must be a solicitor member and one a lay member⁴.

If a solicitor member or a panel decides not to certify that a case to answer is established⁵, the application must be dismissed without formal order unless any party to the proceedings requires otherwise⁶.

If it is certified that there is a case to answer, a clerk must serve the application, the statement and any documents exhibited with them on each respondent⁷.

1 In an application under the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 5: see PARA 908. As to the meaning of 'an application' see PARA 908 note 1.

2 As to the Tribunal see PARA 906.

3 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 6(1).

4 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 6(2), (3).

5 In accordance with the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 6.

6 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 6(4).

7 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 6(5). Any application, statement or other document required to be served under rr 6(5), 8(5) (see PARA 928), 9(4) (see PARA 909) must be served personally, or by sending by guaranteed delivery post or other guaranteed and acknowledged delivery to the last known place of business or abode of the person to be served, and in such other manner as the Tribunal may direct: r 10(1). Any statement, notice or document other than one which is required to be served in accordance with r 10(1) may be served in accordance with r 10(1): r 10(2). In the case of a solicitor, any statement, notice or other document required to be served under the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, may be served by leaving it at the address shown as his place of business in the register kept under the Solicitors Act 1974 s 9 or by any of the methods mentioned in CPR 6.2(a)-(d) (see **CIVIL PROCEDURE** vol 11 (2009) PARA 139): Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 10(3) Any application, statement, notice or other document served in accordance with r 10(1) is deemed served on the second working day following the day on which it is delivered, posted or transmitted: r 10(4). An application, statement, notice or other document delivered to the last known place of business or abode of the person to be served may be regarded by the Tribunal as duly served if it is satisfied that it is reasonable to expect that the application, statement, notice or other document has been received by or brought to the attention of the person to be served: r 10(5). If the Tribunal requires the advertisement of any proceedings under the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, it may regard that advertisement as service for the purposes of those rules: r 10(6).

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912. Procedure before the hearing.

A clerk may give any directions deemed necessary or appropriate for the hearing of any matter brought before the Solicitors Disciplinary Tribunal¹ and may appoint a time and place for the review of the progress of the matter and must notify the parties of the date, time and place of any such review².

A clerk may refer to the Tribunal any matter for a decision or directions and the Tribunal may itself or on the application of any party make an order on such terms as to the Tribunal appear just:

- 1324 (1) to give consent to the withdrawal of an application or allegation in respect of which a case to answer has been certified³;
- 1325 (2) to adjourn any hearing listed for directions or for a substantive hearing⁴;
- 1326 (3) to agree to the amendment of any application or allegation or the correction of any matter⁵;
- 1327 (4) to make any directions which appear necessary or appropriate to secure the timely hearing of the matter⁶.

No application or allegation in respect of which a case to answer has been certified may be withdrawn without the consent of the Tribunal⁷.

Unless the Tribunal has made directions in respect of the hearing, a clerk must appoint a date for the hearing by the Tribunal and give notice of the date to the parties⁸ and arrange for the hearing date to be published in the Daily Cause List of the High Court⁹.

Subject to the following every hearing must take place in public¹⁰. Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of exceptional hardship or exceptional prejudice, to a party, a witness or any person affected by the application¹¹. If it is satisfied that those grounds are met, the Tribunal must conduct the hearing or part of it in private and make such order as appears to it to be just and proper¹².

1 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 11(1). Without prejudice to r 11(1), directions may be made about documentation, inspection, statements, skeleton arguments and the place or time of any hearing: r 11(2). Any hearing under this rule must be held in public unless r 12(4) or 12(5) applies: r 11(5).

2 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 11(3).

3 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 11(4)(a).

4 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 11(4)(b).

5 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 11(4)(c).

6 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 11(4)(d).

7 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 11(6).

8 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 12(1). The hearing must not, unless all the parties have agreed or the Tribunal has so ordered, take place sooner than the expiry of a period of 42 days beginning with the date of service of the notice appointing the date of the hearing: r 12(1).

9 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 12(2).

10 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 12(3).

11 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 12(4). The Tribunal may, before or during a hearing, direct that the hearing or part of it be held in private if the Tribunal is satisfied that it would have granted an application under r 11(4) had one been made or in the Tribunal's view a hearing in public would prejudice the interests of justice: r 11(6).

12 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 12(5).

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913. Evidence.

The Solicitors Disciplinary Tribunal may in its discretion, in respect of a whole case or of any particular fact or facts, proceed and act upon evidence¹ given by statement². Every statement upon which any party proposes to rely must be filed with the clerk and served on all other parties to the application in question no later than 21 days before the date fixed for the hearing of the application together with a notice³.

Any party on whom such a notice has been served and who requires the attendance, at the hearing, of the witness in question must, no later than nine days before the date of the hearing require, in writing, the other party to produce the witness at the hearing⁴.

If no party requires the attendance of a witness the Tribunal may accept the statement in question in evidence⁵. However if a witness who has been required to attend a hearing in accordance with these provisions fails to do so, the onus is on the party seeking to rely on the statement of that witness to show why the statement should be accepted in evidence⁶.

If any party intends to call as a witness any person who has not produced a statement, he must, no later than ten days before the date fixed for the hearing, notify the clerk and any other party to the proceedings of his intention and forthwith serve a copy of a written proof of evidence on the other party and lodge five copies of the proof with the clerk⁷.

In any proceedings before the Solicitors Disciplinary Tribunal which relate to the decision of another court or tribunal, the following apply if it is proved that the decision relates to the relevant party to the application⁸.

A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction must constitute evidence that the person in question was guilty of the offence⁹. The findings of fact upon which that conviction was based must be admissible as conclusive proof of those facts save in exceptional circumstances¹⁰.

The finding of and penalty imposed by any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the order, finding or note of penalty in question and the findings of fact upon which the finding in question was based must be admissible as proof but not conclusive proof of the facts in question¹¹.

The judgment of any civil court in any jurisdiction may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based must be admissible as proof but not conclusive proof of those facts¹².

¹ The Civil Evidence Acts 1968 and 1972 (see generally **CIVIL PROCEDURE**) apply in relation to proceedings before the Tribunal in the same manner as they apply in relation to civil proceedings: Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 13(1). Any notice given pursuant to those Acts must be given not less than 21 days before the date fixed for the hearing of an application; and any counter-notice must be given not less than ten days before the date fixed for the hearing: r 13(2), (3). No later than 28 days before the date fixed for the hearing of an application, the applicant may, by written notice, require any other party to the application to indicate to him, no later than the date on which the period of 14 days from the date of the giving of the notice expires, which of any facts set out in the statement submitted in support of the application are in dispute: r 13(4). Failure to reply to such a notice is material only in relation to the question of costs: r 13(5). Any party to an application may, by written notice, not later than nine days before the date fixed for the hearing,

request any other party to agree that any document may be admitted as evidence. If any other party desires to challenge the authenticity of a document which is the subject of r 13(6), he must no later than the date on which the period of six days beginning with the date on which the notice was served, give notice that he does not agree to the admission of the document and that he requires that its authenticity be proved at the hearing: r 13(7). If the recipient of a notice given under r 13(6) does not give a notice in response within the period mentioned in r 13(7), he must be deemed to have admitted the document unless otherwise ordered by the Tribunal: r 13(8). A party to an application may, pursuant to the Solicitors Act 1974 s 46(11) (see PARA 906), require the attendance at the hearing of any person or the production of any document relevant to the proceedings and any summons for that purpose must be in Form 5 in the Schedule to the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588: r 13(9). At the discretion of the Tribunal, the strict rules of evidence must not apply at a hearing before the Tribunal: r 13(10). As to the meaning of 'application' see PARA 908 note 1.

2 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 14(1). As to the meaning of 'statement' see PARA 908 note 7.

3 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 14(2). The statement must be served along with a notice in the form of Form 6 in Schedule to the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588: r 14(2).

4 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 14(3).

5 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 14(4).

6 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 14(5).

7 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 14(6).

8 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 15(1). As to the meaning of 'application' see PARA 908 note 1.

9 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 15(2).

10 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 15(2).

11 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 15(3).

12 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 15(4).

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914. Hearings and findings.

The hearing of an application¹ must take place at such time and place as is considered by the Solicitors Disciplinary Tribunal to be appropriate and convenient². If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with the Solicitors (Disciplinary Proceedings) Rules 2007³ the Tribunal has power to hear and determine an application notwithstanding that the respondent fails to attend in person or is not represented at the hearing⁴.

At the conclusion of the hearing, the Tribunal must make a finding as to whether any or all of the allegations in the application have been substantiated whereupon a clerk must inform the Tribunal whether in any previous disciplinary proceedings before the Tribunal allegations were found to have been substantiated against the respondent⁵. The respondent is entitled to make submissions by way of mitigation in respect of any sanction (including any order for costs) which the Tribunal may impose⁶.

1 As to the meaning of 'application' see PARA 908 note 1.

2 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 16(1).

3 Ie the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588.

4 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 16(2).

5 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 16(3).

6 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 16(4). The Tribunal may make such order as to costs as the Tribunal thinks fit including an order disallowing costs incurred unnecessarily or that costs be paid by any party judged to be responsible for wasted or unnecessary costs, whether arising through non-compliance with time limits or otherwise: r 18(1). The Tribunal may order that any party bear the whole or a part or a proportion of the costs: r 18(2). The amount of costs to be paid may either be fixed by the Tribunal or be subject to detailed assessment by a costs judge: r 18(3). The Tribunal may also make an order as to costs where any application or allegation is withdrawn or amended and where no allegation of misconduct (including an application under the Solicitors Act 1974 s 43 (see PARAS 926-928)) is proved against a respondent: Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 18(4). Where the Tribunal has made a finding based solely upon the certificate of conviction for a criminal offence which is subsequently quashed the Tribunal may, on application revoke its finding and make such order as to costs as appears to be just in the circumstances: r 21(5).

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915. Orders of the Solicitors Disciplinary Tribunal.

The Solicitors Disciplinary Tribunal may announce its decision and make an order at the conclusion of the hearing or may reserve its decision for announcement at a later date¹. In either case the announcement must be made in public and the Tribunal must as soon as is practicable deliver to the applicant and to the respondent its detailed written findings which must include its reasons and conclusions upon the evidence before it².

All orders of the Tribunal must be filed with the Solicitors Regulation Authority³, and an order which has been so filed is treated for the purpose of enforcement as if it had been made by the High Court⁴. Any such file kept by the Authority may be inspected during office hours without payment by any person⁵.

1 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 16(4).

2 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 16(4). An order made under r 16(5) must be signed by a member of the Tribunal upon the announcement of the decision and must, subject to r 17(2), be filed forthwith with the Solicitors Regulation Authority: r 17(1). The Tribunal may suspend the filing of the order if it appears to the Tribunal that there is good reason to do so, in which event the order does not take effect (including any suspension from practice) until it is filed with the Authority: r 17(2). The Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, refer to the 'Law Society'. However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

3 See the Solicitors Act 1974 s 48(1). As to the Tribunal see PARA 906 et seq. A statement of the Tribunal's findings signed by the chairman or some other Tribunal member authorised by him must be prefaced to the order or added to the file containing the order as soon as may be after the order has been made: s 48(1). As to entry on the roll of solicitors of the effect of adverse Tribunal orders see s 48(2); and PARA 663. The Solicitors Act 1974 s 48(1) refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and the making of such rules is the Solicitors Regulation Authority (see PARA 619).

4 Solicitors Act 1974 s 48(4).

5 Solicitors Act 1974 s 48(3). Until a day to be appointed s 48(3) is subject to s 43(5) (see PARA 927): s 48(3) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 50(b)). At the date at which this volume states the law no such day had been appointed.

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916. Re-hearing.

At any time before the filing of the Tribunal's Order¹ or before the expiry of the period of 14 days beginning with the date of the filing of the order, the respondent may apply to the Solicitors Disciplinary Tribunal for a re-hearing of an application if he neither attended in person nor was represented at the hearing of the application in question and the Tribunal determined the application in his absence². If satisfied that it is just so to do, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit³. The re-hearing must be held before a Division of the Tribunal comprised of different members from those who heard the original application⁴.

1 le the filing of the order under the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 17 (see PARA 915).

2 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 19(1). Such an application must be made under Form 7 in the Schedule to the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, and be supported by a statement setting out the facts upon which the applicant wishes to rely: r 19(2).

3 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 19(3).

4 Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 19(3).

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917. Right of appeal.

An appeal from the Solicitors Disciplinary Tribunal¹ lies to the High Court² and the High Court has power to make such order on appeal as it thinks fit³. An appeal from the Tribunal lies at the instance of the applicant or complainant⁴ or the person with respect to whom the application was made⁵.

1 As to the Tribunal see PARA 906. The order appealed against includes the statement of findings in relation to the facts, which may be the subject of appeal: see *Re A Solicitor* [1956] 3 All ER 516, [1956] 1 WLR 1312, DC, where there was no appeal against the findings; *Re A Solicitor* [1960] 2 QB 212, [1960] 2 All ER 621, DC, where the court considered the findings.

2 Solicitors Act 1974 s 49(1)(b). However, until a day to be appointed, in the case of an order on an application under s 43(3) or s 47(1)(d), (e) or (f) or the refusal of any such application, an appeal lies to the Master of the Rolls: see s 49(1) (amended by the Courts and Legal Services Act 1990 s 92(6); and prospectively amended by the Legal Services Act 2007 Sch 16 para 51(2)). At the date at which this volume states the law no such day had been appointed. As to circumstances in which the Divisional Court erred in quashing an order for suspension see *Bolton v Law Society* [1994] 2 All ER 486, [1994] 1 WLR 512, CA.

3 See the Solicitors Act 1974 s 49(4). Subject to any rules of court, on an appeal against an order made by virtue of rules under s 46(10)(c) (see PARA 629) without hearing the applicant or complainant, the court is not obliged to hear the appellant and may remit the matter to the Tribunal instead of dismissing the appeal: s 49(5). As from a day to be appointed any decision of the High Court on an application under s 43(3) or s 47(1)(d), (e), (ea) or (f) or against an order under s 43(3A) is final: s 49(6) (prospectively substituted by the Legal Services Act 2007 Sch 16 para 51(6)). At the date at which this volume states the law no such day had been appointed. If the court considers a sanction excessive it may impose a lesser penalty: see *Yerolemou v Law Society* [2008] All ER (D) 136 (Mar).

4 An appeal may be made to the Master of the Rolls against a decision by the Tribunal to restore to the roll a solicitor who has been previously struck off: *R v Master of the Rolls, ex p McKinnell* [1993] 1 All ER 193, [1993] 1 WLR 88, DC. Notification of appeal to the Law Society and the Tribunal chairman does not make them parties to the appeal: *Lucas v Millman* [2002] EWHC 2470 (Admin), [2003] 1 WLR 271, [2002] All ER (D) 52 (Nov), DC.

5 Solicitors Act 1974 s 49(2). This is subject to s 49(3) and, as from a day to be appointed, the Administration of Justice Act 1985 s 43(5) (see PARA 233): see the Solicitors Act 1974 s 49(2) (prospectively amended by the Legal Services Act 2007 Sch 16 para 51(3)). An appeal against an order under the Solicitors Act 1974 s 43(3A) (see PARA 928) must lie only at the instance of the person with respect to whom the order was made, and an appeal against an order under s 47 excluding any person or persons from legal aid work lies only at the instance of any person so excluded: s 49(3) (amended by the Administration of Justice Act 1985 Sch 7 para 6; and the Access to Justice Act 1999 Sch 7 para 9(2)). As from a day to be appointed the words 'providing representation funded by the Legal Services Commission as part of the Criminal Defence Service' in the Solicitors Act 1974 s 49(3) are substituted for the words 'legal aid work' by the Legal Services Act 2007 Sch 16 para 51(4). At the date at which this volume states the law no such days had been appointed.

UPDATE

917-918 Right of appeal, Appeals to the Master of the Rolls

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

917 Right of appeal

NOTES 2, 3, 5--Day appointed is 1 July 2009: SI 2009/1365.

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918. Appeals to the Master of the Rolls.

Until a day to be appointed¹ in certain cases² an appeal from the Solicitors Disciplinary Tribunal lies to the Master of the Rolls³ who has the power to make such an order as he thinks fit⁴.

Applications and appeals to the Master of the Rolls in relation to matters before the Solicitors Regulation Authority⁵ or the Solicitors Disciplinary Tribunal are governed by the Master of the Roll (Applications and Appeals) Regulations 2001⁶.

Where the relevant statute, regulation or rule makes no provision as to the time limit for making an application or appeal, an application or appeal may be made within four weeks of:

- 1328 (1) the Authority writing to notify the applicant or appellant of the Authority's action or decision⁷;
- 1329 (2) expiry of the period within which the Authority is required to take action under the statute, rule or regulations⁸; or
- 1330 (3) the filing of the findings of the Solicitors Disciplinary Tribunal, as appropriate⁹.

However the Master of the Rolls may waive or abridge any time limit under the Master of the Roll (Applications and Appeals) Regulations 2001¹⁰.

The applicant or appellant must deliver to the clerk to the Master of the Rolls a petition signed by the applicant or appellant¹¹ setting out:

- 1331 (a) the rule, regulation or statutory provision under which the Master of the Rolls has jurisdiction¹²;
- 1332 (b) the relief sought¹³;
- 1333 (c) the circumstances of the application or appeal and any other relevant matters¹⁴;
- 1334 (d) the matters of fact relied on¹⁵;
- 1335 (e) any representations as to whether the hearing should be in public or in private¹⁶; and
- 1336 (f) a statement that all the facts stated in the petition are true¹⁷.

In the case of an appeal against a decision of the Solicitors Disciplinary Tribunal copies of all documents referred to at the hearing before the Tribunal must also be delivered to the clerk¹⁸.

Any respondent may make written submissions to the Master of the Rolls on the substance of the application or appeal, or on the jurisdiction of the Master of the Rolls to deal with the application or appeal, or on whether the hearing should be in public or in private, within six weeks of receiving the copy of the petition and other documents¹⁹.

The Master of the Rolls will appoint a time for hearing the application or appeal²⁰. However where the substantive issues raised by the application or appeal are the same as issues which the Master of the Rolls has already disposed of in an earlier application or appeal by the same applicant or appellant, the Master of the Rolls may refuse the application or appeal without a hearing, with or without an order as to costs²¹.

The hearing must be in public unless all parties to the application or appeal agree that all or part of the hearing must be in private and the Master of the Rolls considers that this will not be contrary to the interests of justice or the Master of the Rolls considers that there are exceptional circumstances which justify hearing all or part of the application or appeal in private²².

On the hearing of the application or appeal no formal rules of evidence apply²³. Where the relevant statute, regulation or rule makes no express provision as to the powers of the Master of the Rolls, the Master of the Rolls may make such order as he thinks fit²⁴.

1 As from a day to be appointed such appeals only lie to the High Court and accordingly the Solicitors Act 1974 s 49(1) is amended and s 49(6) is substituted and s 49(7) is repealed by the Legal Services Act 2007 Sch 16 para 51. At the date at which this volume states the law no such day had been appointed.

2 In the refusal of an application or an application under the Solicitors Act 1974 ss 43(3), 47(1)(d)-(f) (see PARAS 907, 928).

3 See the Solicitors Act 1974 s 49(1)(a) (amended by the Courts and Legal Services Act 1990 s 92(6); and prospectively amended).

4 See the Solicitors Act 1974 s 49(4). The Master of the Rolls may make regulations about appeals to him under s 49: s 49(7). Any decision of the Master of the Rolls on such an appeal is final: see s 49(6).

5 The Master of the Rolls (Appeals and Applications) Regulations 2001 refer to the Law Society and its Council. However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619). The Authority must always be made a respondent to the application or appeal other than one initiated by the Authority: reg 3.

6 See the Master of the Roll (Appeals and Applications) Regulations 2001 reg 2. The regulations came into force on 29 June 2001 whereupon the Master of Rolls (Appeals and Applications) Regulations 1991 ceased to have effect: Master of the Roll (Appeals and Applications) Regulations 2001 reg 1.

7 Master of the Roll (Appeals and Applications) Regulations 2001 reg 4(a).

8 Master of the Roll (Appeals and Applications) Regulations 2001 reg 4(b).

9 Master of the Roll (Appeals and Applications) Regulations 2001 reg 4(c).

10 Master of the Roll (Appeals and Applications) Regulations 2001 reg 5.

11 Within two days of delivering the petition and other documents to the clerk to the Master of the Rolls the applicant or appellant must deliver copies to the Authority and to any other respondent at his last known business or home address: see the Master of the Roll (Appeals and Applications) Regulations 2001 reg 6.

12 Master of the Roll (Appeals and Applications) Regulations 2001 reg 6(a)(i).

13 Master of the Roll (Appeals and Applications) Regulations 2001 reg 6(a)(ii).

14 Master of the Roll (Appeals and Applications) Regulations 2001 reg 6(a)(iii).

15 Master of the Roll (Appeals and Applications) Regulations 2001 reg 6(a)(iv).

16 Master of the Roll (Appeals and Applications) Regulations 2001 reg 6(a)(v).

17 Master of the Roll (Appeals and Applications) Regulations 2001 reg 6(a)(vi).

18 Master of the Roll (Appeals and Applications) Regulations 2001 reg 6(b).

19 Master of the Roll (Appeals and Applications) Regulations 2001 reg 7. The respondent must at the same time send copies of any such submissions to the applicant or appellant and to any other respondent: reg 7.

20 Master of the Roll (Appeals and Applications) Regulations 2001 reg 9.

21 Master of the Roll (Appeals and Applications) Regulations 2001 reg 8.

22 Master of the Roll (Appeals and Applications) Regulations 2001 reg 10. On the hearing of the application or appeal the applicant or appellant and the respondent may appear in person, or by solicitor or counsel, or by a registered European lawyer (ie a European lawyer registered under the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 17 (see PARA 542)), or in the case of a company by a director, or in the case of a limited liability partnership by a member, or in the case of the Authority by a member of its staff: see the Master of the Roll (Appeals and Applications) Regulations 2001 reg 11.

23 Master of the Roll (Appeals and Applications) Regulations 2001 reg 12.

24 Master of the Roll (Appeals and Applications) Regulations 2001 reg 13. The Master of the Rolls may make such order as to the costs of any application or appeal as he thinks fit: reg 14. Any direction or order made by the Master of the Rolls on an application or appeal must be signed by the Master of the rolls and delivered to the Authority and a copy must be sent to all other parties: reg 15.

UPDATE

917-918 Right of appeal, Appeals to the Master of the Rolls

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

918 Appeals to the Master of the Rolls

NOTE 1--Day appointed is 1 July 2009: SI 2009/1365.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(v) Disciplinary Proceedings before the Courts/919. Application and hearing.

(v) Disciplinary Proceedings before the Courts

919. Application and hearing.

An application to the court¹ is made to the High Court² (usually to a Divisional Court of the Queen's Bench Division³) by motion supported by affidavit⁴. The applicant must serve on the Solicitors Regulation Authority⁵ 14 clear days' notice of his intention to make the application, together with copies of all affidavits intended to be used in support⁶. At the hearing the Authority may appear by counsel⁷. The court has no jurisdiction to entertain such an application made by an applicant in person⁸. The court must not entertain the application except upon production of an affidavit proving that the applicant has served the requisite notice and copies on the Authority⁹. An application, once initiated, cannot be withdrawn without the sanction of the court¹⁰.

The court¹¹ has a discretion over the order it makes when exercising its disciplinary jurisdiction, and may order the solicitor to be suspended from practice¹² or to pay costs in lieu of ordering his name to be struck off the roll¹³.

1 Although this procedure is theoretically open to an applicant (see the Solicitors Act 1974 s 50(2); and PARA 745), in practice almost every application should be made to the Solicitors Disciplinary Tribunal: see s 47(1); and PARA 906. An application by any person to require a solicitor to answer allegations contained in an affidavit may be treated by the court as an application to strike the name of the solicitor off the roll: see s 55; and PARA 907 note 2. As to the liability of solicitors as officers of the court see PARA 745 et seq. There is a right of appeal to the Court of Appeal: see s 50(3); and PARA 745. As to the roll see PARA 621; and as to striking off see PARAS 664, 909.

2 Solicitors Act 1974 s 51(1).

3 See *Re A Solicitor* (1928) 72 Sol Jo 368, 570, DC. These applications are distinct from such applications as might be made to a court in the course of an action proceeding before that court: see the judgments in *Brendon v Spiro* [1938] 1 KB 176, [1937] 2 All ER 496, CA. Cf *Davies v Davies* [1960] 3 All ER 248, [1960] 1 WLR 1004, CA. It is not part of the court's function in trying a case depending on evidence to say whether a solicitor has acted with professional propriety; a matter of professional ethics is a matter for the disciplinary body: *Davies v Davies* at 250 and 1006 per Hodson LJ.

4 See the Solicitors Act 1974 s 52; and PARA 920.

5 The Solicitors Act 1974 ss 51-53 refer to the 'Society' (ie the Law Society: see the Solicitors Act 1974 s 87(1); and PARA 602 note 4). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority.

6 Solicitors Act 1974 s 51(2). The provisions of s 51 are subject to the provisions of s 54 (which imposes restrictions on the power to strike a solicitor's name off the roll: see PARA 664): s 51(1).

7 Solicitors Act 1974 s 51(3).

8 See *Re Solicitors, ex p Peasegood* [1994] 1 All ER 298, DC. The applicant may, however, appear in person on an appeal from an order of the Tribunal (see PARA 917), but not on an original application to the court: *Ex p Pitt* (1834) 5 B & Ad 1077; *Re A Solicitor, ex p Incorporated Law Society* [1903] 1 KB 857, DC; *Re Two Solicitors* [1938] 1 KB 616, [1937] 4 All ER 451, CA.

9 Solicitors Act 1974 s 51(2).

10 *Re --* (1863) 9 LT 299; *Re An Attorney* (1875) 19 Sol Jo 635.

11 As to appeals from the Tribunal see PARA 917 et seq.

12 See eg *Re Blake* (1860) 3 E & E 34.

13 See eg *Re A Solicitor, ex p the Law Society* (1910) 55 Sol Jo 49, DC; *Re A Solicitor, ex p the Law Society* (1913) 29 TLR 354, DC.

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920. Orders.

At the hearing of the application the Solicitors Regulation Authority¹ may apply for any order nisi that may have been made by the court to be made absolute², or for an order that the solicitor's name be struck off the roll³, or for such other order as the court thinks fit⁴. The court may order the Authority's costs to be paid by the applicant or the solicitor or partly by one and partly by the other⁵; but there is no power to make an order for payment of costs out of central funds⁶.

Where an order is made by the High Court or the Court of Appeal on a motion to strike a solicitor's name off the roll or to require a solicitor to answer allegations in an affidavit, and that order has not been drawn up within a week after it was made, the Authority may cause the order to be drawn up, and all future proceedings on it must be taken as if the motion had been made by the Authority⁷. If the court orders that a solicitor's name be struck off the roll or that he be suspended from practice, the proper officer of the court must send a copy of the order to the Authority, which must enter a note of it on the roll and, if the order so directs, strike the solicitor's name off the roll⁸.

1 The Solicitors Act 1974 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

2 Solicitors Act 1974 s 51(3)(a).

3 Solicitors Act 1974 s 51(3)(b).

4 Solicitors Act 1974 s 51(3)(c).

5 Solicitors Act 1974 s 51(4).

6 See *Steele Ford & Newton (a firm) v Crown Prosecution Service (No 2)* [1994] 1 AC 22, [1993] 2 All ER 769, HL.

7 Solicitors Act 1974 s 52.

8 Solicitors Act 1974 s 53.

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921. Appeals.

An appeal from a decision of the High Court that a solicitor's name is struck off the roll lies to the Court of Appeal¹ without leave². The Solicitors Regulation Authority³ may be represented by counsel⁴ and the provisions relating to the drawing up of orders by, and the sending of orders to, the Authority apply⁵.

1 See the Solicitors Act 1974 s 50(3); PARA 745; and *Re Hardwick* (1883) 12 QBD 148, CA. As to the procedure generally see **CIVIL PROCEDURE** vol 12 (2009) PARA 1701 et seq. As to previous findings of fact see *Re A Solicitor* [1945] KB 368, [1945] 1 All ER 445, CA.

2 See the Supreme Court Act 1981 s 16(1). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

3 The Solicitors Act 1974 s 51 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority.

4 See the Solicitors Act 1974 s 51(3); and PARA 919.

5 See the Solicitors Act 1974 ss 52, 53; and PARA 919.

UPDATE

921 Appeals

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604.

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(vi) Adverse Applications

A. GROUNDS FOR EXERCISING JURISDICTION

922. Introduction.

An adverse application against a solicitor may be distinguished from a permissive application; the former is an application to strike a solicitor's name off the roll¹, and the latter is an application by a solicitor that his name be removed from the roll², and is made to the Solicitors Regulation Authority³. An application that the name of a solicitor be struck off the roll or that he be required to answer allegations contained in an affidavit⁴ may be based on grounds specified by statute⁵. Until the introduction of the Solicitors' Code of Conduct 2007⁶ an application may also be based on the ground of conduct unbecoming a solicitor⁷.

1 As to striking off the roll see PARA 909.

2 As to removal from the roll see PARA 663.

3 See the Solicitors Act 1974 s 8(1); and PARA 663. The Solicitors Act 1974 s 8 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

4 See PARA 907 note 2.

5 As to the statutory grounds see PARA 923.

6 As to the Solicitors' Code of Conduct 2007 see PARA 830 et seq.

7 It was formerly the practice to refer to misconduct or to professional misconduct. It is now customary to refer to conduct unbecoming a solicitor: see PARA 870.

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923. Statutory grounds for disciplinary proceedings.

By statute, complaint may be made to the Solicitors Disciplinary Tribunal¹ in respect of a solicitor upon the following grounds:

- 1337 (1) that he has failed to comply with any rules made by the Solicitors Regulation Authority² as to the keeping of accounts³ or as to the professional practice, conduct and discipline of solicitors⁴ or in relation to indemnity⁵;
- 1338 (2) that he has failed to comply with the statutory provisions relating to the submission of accountant's reports or with rules made by the Authority in this respect⁶;
- 1339 (3) that he has knowingly acted in contravention of an order made by the Tribunal in respect of an employee or consultant of a solicitor⁷ or of any conditions subject to which permission has been granted for the employment of that person⁸;
- 1340 (4) that without the written permission of the Authority or in contravention of conditions upon which such permission was given he has employed or remunerated in connection with his practice as a solicitor any person who to his knowledge is disqualified from practising as a solicitor because such person's name has been struck off the roll⁹ or because such person is suspended from practising¹⁰.

Until a day to be appointed a complaint may be made to the Tribunal in respect of a solicitor upon the following grounds:

- 1341 (a) that in or in relation to an application for a practising certificate he has made a false statement material to that application¹¹;
- 1342 (b) that in or in relation to a notice to the Authority of a change in his place or places of business¹² he has made a false statement material to that notice¹³.

1 As to the Solicitors Disciplinary Tribunal see PARA 906.

2 The following provisions of the Solicitors Act 1974 refer to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 See the Solicitors Act 1974 s 32(3); and PARA 846. Any person may make the complaint: s 32(3). The relevant rules having effect under s 32 are the Solicitors' Accounts Rules 1998: see PARA 835 et seq.

4 See the Solicitors Act 1974 s 31(2); and PARA 828.

5 See the Solicitors Act 1974 s 37(4); and PARA 853. The relevant rules having effect under s 37(4) are the Solicitors' Indemnity Insurance Rules 2008: see PARA 854. As from a day to be appointed a complaint may also be made to the Tribunal that an employee of a solicitor has failed to comply with rules that have effect in relation to them: see the Solicitors Act 1974 s 34A(2), (3); and PARA 835. At the date at which this volume states the law no such day had been appointed.

6 See the Solicitors Act 1974 s 34(6); and PARA 849. The complaint may only be made by or on behalf of the Authority: s 34(6).

7 Ie an order under the Solicitors Act 1974 s 43(2): see PARA 927.

8 See the Solicitors Act 1974 s 44(2); and PARA 929. The complaint may only be made by or on behalf of the Authority: s 44(2).

9 See the Solicitors Act 1974 s 41(1)(a), (4); and PARAS 924-925.

10 See the Solicitors Act 1974 s 41(1)(b),(c), (4); and PARAS 924-925. As to the suspension of practising certificates see PARAS 901-903.

11 See the Solicitors Act 1974 s 9(5); and PARA 668. The complaint may only be made by or on behalf of the Authority: see s 9(5); and PARA 668. As to applications for practising certificates see PARA 668.

12 Is a notice under the Solicitors Act 1974 s 84(1): see PARA 621.

13 See the Solicitors Act 1974 s 9(5) (prospectively repealed); and PARA 668. The complaint may only be made by or on behalf of the Authority: see s 9(5) (prospectively repealed); and PARA 668.

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B. EMPLOYMENT OF DISQUALIFIED PERSONS

924. Restrictions on employment of disqualified persons.

A solicitor may not employ or remunerate in connection with his practice as a solicitor any person who to his knowledge is disqualified from practising as a solicitor because:

- 1343 (1) his name has been struck off the roll¹; or
- 1344 (2) he is suspended from practising as a solicitor²; or
- 1345 (3) his practising certificate is suspended while he is an undischarged bankrupt³.

Nor may he so employ or remunerate any person if, to his knowledge, there is a direction in force in relation to that person⁴ prohibiting the restoration of his name to the roll except by order of the Solicitors Disciplinary Tribunal⁵. These prohibitions do not apply where the solicitor seeking to employ such a person obtains the written permission of the Solicitors Regulation Authority⁶, which may be granted for such period and subject to such conditions as the Authority thinks fit⁷. A solicitor aggrieved by the refusal of the Authority to grant such permission, or by any conditions attached by the Authority to the grant of any such permission, may appeal to the Master of the Rolls⁸ who may:

- 1346 (a) confirm the refusal or the conditions, as the case may be; or
- 1347 (b) grant a permission for such period and subject to such conditions as he thinks fit⁹.

These provisions¹⁰ apply to a recognised body¹¹ and its business as such as they apply to a solicitor and his practice as such¹².

1 Solicitors Act 1974 s 41(1)(a). As to the roll see PARA 621. As to striking off see further PARA 909.

2 Solicitors Act 1974 s 41(1)(b). As to suspension see PARA 909.

3 Solicitors Act 1974 s 41(1)(c). As to suspension of the practising certificate see s 15; and PARA 901.

4 I.e a direction under the Solicitors Act 1974 s 47(2)(g) (see PARA 909).

5 Solicitors Act 1974 s 41(1A) (added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 14). As to the Tribunal see PARA 906.

6 Solicitors Act 1974 s 41(1), (1A) (s 41(1A) as added: see note 5). The Solicitors Act 1974 s 41 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority: see PARA 619. As from a day to be appointed where a solicitor (the 'employed solicitor') is employed by another solicitor in accordance with a written permission granted under s 41 and the employed solicitor is disqualified from practising as a solicitor by reason of a fact mentioned in s 41(1)(b) or s 41(1)(c), then s 20(1) (see PARA 589) does not apply in relation to anything done by the employed solicitor in the course of that employment: s 41(1B) (prospectively added by the Legal Services Act 2007 Sch 16 para 41(2)). At the date at which this volume states the law no such day had been appointed.

7 Solicitors Act 1974 s 41(2).

8 The Master of the Rolls may make regulations about such appeals to him: Solicitors Act 1974 s 41(5). As to appeals to the Master of the Rolls see the Master of the Rolls (Appeals and Applications Regulations) 2001; and PARA 918. As from a day to be appointed such appeals are made to the High Court instead of the Master of the Rolls and the Solicitors Act 1974 s 41(3) is accordingly amended and s 41(5) is prospectively repealed by the Legal Services Act 2007 Sch 16 para 41(3)(a), (6), Sch 23. The decision of the High Court is final and the court may make such order as it thinks fit as to payment of costs: Solicitors Act 1974 s 41(4A), (4B) (prospectively added by the Legal Services Act 2007 Sch 16 para 41(5)). The Authority may make rules providing that appeals under the Solicitors Act 1974 s 41(3) lie to the Tribunal and not to the High Court: see s 49A(1), (2)(e) (not yet in force); and PARA 905. At the date at which this volume states the law no such day had been appointed.

9 Solicitors Act 1974 s 41(3) (prospectively amended: see note 8).

10 The penalty under the Solicitors Act 1974 s 41(4) (see PARA 925) does not, however, so apply: see the Administration of Justice Act 1985 Sch 2 para 9(1); and PARA 701.

11 As to the meaning of 'recognised body' see PARA 687 note 3.

12 See the Administration of Justice Act 1985 Sch 2 para 9(1); and PARA 701.

UPDATE

924-925 Restrictions on employment of disqualified persons, Penalties on employer and employee

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) para 733.

924 Restrictions on employment of disqualified persons

NOTE 6--Day appointed is 31 March 2009: SI 2009/503.

NOTE 8--Day appointed is 1 July 2009: SI 2009/1365.

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925. Penalties on employer and employee.

If a solicitor contravenes the provisions as to the employment of disqualified persons¹ or any condition on which permission to employ such a person has been given, the Solicitors Disciplinary Tribunal² or, as the case may be, the High Court must order that his name be struck off the roll³ or that he be suspended from practising as a solicitor for such period as the Tribunal or the court thinks fit⁴.

Any person who seeks or accepts employment by a solicitor in connection with his practice:

1348 (1) while he is disqualified from practising as a solicitor by reason of the fact that:

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- 47. (a) his name has been struck off the roll⁵; or
- 48. (b) he is suspended from practising as a solicitor⁶; or
- 49. (c) his practising certificate is suspended while he is an undischarged bankrupt⁷; or

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1349 (2) while there is a direction in force with respect to him⁸ prohibiting the restoration of his name to the roll except by order of the Tribunal⁹,

and who has not previously informed the solicitor of the disqualification or the direction, is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁰. The proceedings may be commenced¹¹ at any time before the expiration of six months after the discovery of the offence by the prosecutor, but no such proceedings may be commenced except by, or with the consent of, the Attorney General¹².

These penalties also apply to employment by a recognised body¹³ in connection with its practice¹⁴.

1 Ie the Solicitors Act 1974 s 41: see PARA 924.

2 As to the Tribunal see PARA 906.

3 Solicitors Act 1974 s 41(4)(a). As to the roll see PARA 621; as to the meaning of references to striking off see PARA 665 note 5; and as to striking off the roll see PARA 909.

4 Solicitors Act 1974 s 41(4)(b). As to suspension from practice see PARA 909. As from a day to be appointed the words from 'must' to 'fit' are substituted by the Legal Services Act 2007 Sch 16 para 41(4) and instead read 'may':

276 (1) order that his name be struck off the roll;

277 (2) order that he be suspended from practice for such period as the Tribunal or as the court thinks fit; or

278 (3) make such other order in the matter as it thinks fit.'

At the date at which this volume states the law no such day had been appointed.

5 Solicitors Act 1974 s 42(1)(a).

- 6 Solicitors Act 1974 s 42(1)(b).
- 7 Solicitors Act 1974 s 42(1)(c). As to suspension of the practising certificate see s 15; and PARA 901.
- 8 Ie a direction under the Solicitors Act 1974 s 47(2)(g) (see PARA 909).
- 9 Solicitors Act 1974 s 42(1A) (added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 15).
- 10 Solicitors Act 1974 s 42(1), (1A) (s 42(1) amended by virtue of the Criminal Justice Act 1982 ss 38, 46; the Solicitors Act 1974 s 42(1A) as added (see note 9)). As to the standard scale see PARA 571 note 1.
- 11 Ie notwithstanding anything in the Magistrates' Courts Act 1980: Solicitors Act 1974 s 42(2) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 132).
- 12 Solicitors Act 1974 s 42(2) (as amended: see note 11). As to time limits in criminal proceedings generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 1047; and as to consents to prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1071.
- 13 As to the meaning of 'recognised body' see PARA 687 note 3.
- 14 See the Administration of Justice Act 1985 s 9(6), Sch 2 para 10; and PARA 702.

UPDATE

924-925 Restrictions on employment of disqualified persons, Penalties on employer and employee

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) para 733.

925 Penalties on employer and employee

NOTE 4--Day appointed is 1 July 2009: SI 2009/1365.

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C. APPLICATIONS IN RESPECT OF SOLICITORS' EMPLOYEES ETC

926. Grounds for application.

Until a day to be appointed the following provisions have effect¹. Where a person who is or was employed or remunerated by a solicitor, in connection with his practice, or employed or remunerated by a recognised body, but is himself not a solicitor:

- 1350 (1) has been convicted of a criminal offence which discloses such dishonesty that in the opinion of the Solicitors Regulation Authority² it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice, or a recognised body in connection with its business³; or
- 1351 (2) has, in the opinion of the Authority, occasioned or been a party to, with or without the connivance of the solicitor, or the director of a recognised body, by whom he is or was employed or remunerated, an act or default in relation to that solicitor's practice, or body's business, which involved conduct on his part of such a nature that in the opinion of the Authority it would be undesirable for him to be employed or remunerated by a solicitor in connection with his practice, or recognised body in connection with its business⁴,

the Authority may either make, or make an application to the Solicitors Disciplinary Tribunal⁵ for it to make, an order⁶ prohibiting any solicitor, without the written permission of the Authority, from employing, or remunerating in connection with the solicitor's practice or recognised body's business, such a person⁷.

As from a day to be appointed the following provisions have effect⁸. Where a person who is or was involved in a legal practice but is not a solicitor:

- 1352 (a) has been convicted of a criminal offence which is such that in the opinion of the Authority it would be undesirable for the person to be involved in a legal practice in one or more of a certain number of ways⁹; or
- 1353 (b) has, in the opinion of the Authority, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice, which is such that in the opinion of the Authority it would be undesirable for the person to be involved in a legal practice¹⁰ in one or more of a certain number of ways¹¹,

the Authority may either make, or make an application to the Tribunal for it to make, an order¹² prohibiting the employment or remuneration of that person except in accordance with the Authority's permission¹³.

¹ The Solicitors Act 1974 s 43(1) is substituted by the Legal Services Act 2007 Sch 16 Pt 1 paras 1, 42(1), (2) and the Administration of Justice Act 1985 Sch 2 para 11(1) is repealed by the Legal Services Act 2007 Sch 16 para 98, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 The Solicitors Act 1974 s 43 and the Administration of Justice Act 1985 Sch 2 para 11(1) refer to the 'Society' or the 'Council' (ie the Law Society and the Council of the Law Society: see the Solicitors Act 1974 s 87(1); and PARA 602 note 4 (definition applied in the case of the Administration of Justice Act 1985 Sch 2 by Sch 2 para 1(5))). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 Solicitors Act 1974 s 43(1)(a) (amended by the Access to Justice Act 1999 s 48, Sch 7 para 7(1), (2)(b); and prospectively substituted (see note 1)); Administration of Justice Act 1985 Sch 2 para 11(1)(a) (amended by the Access to Justice Act 1999 Sch 7 para 10(a); and prospectively repealed).

4 Solicitors Act 1974 s 43(1)(b) (amended by the Administration of Justice Act 1985 Sch 1 para 10(a); the Access to Justice Act 1999 Sch 7 para 7(2)(b), (c)); Administration of Justice Act 1985 Sch 2 para 11(1) (amended by the Access to Justice Act 1999 Sch 7 para 10(a); and prospectively repealed). See also *Izegbu v Law Society* [2008] EWHC 1043 (Admin), [2008] All ER (D) 284 (May).

5 As to the Tribunal see PARA 906.

6 ie an order under the Solicitors Act 1974 s 43(2) (see PARA 927).

7 Solicitors Act 1974 s 43(1) (amended by the Access to Justice Act 1999 Sch 7 para 7(2)(a); and prospectively substituted (see note 1)); Administration of Justice Act 1985 Sch 2 para 11(1) (amended by the Access to Justice Act 1999 Sch 7 para 10(a); and prospectively repealed). Provision is made with regard to the payment of costs: see the Solicitors Act 1974 s 43(1A); and PARA 927.

8 See note 1.

9 Solicitors Act 1974 s 43(1)(a). A person is involved in a legal practice for these purposes if he:

279 (1) is employed or remunerated by a solicitor in connection with the solicitor's practice;

280 (2) is undertaking work in the name of, or under the direction or supervision of, a solicitor;

281 (3) is employed or remunerated by a recognised body;

282 (4) is employed or remunerated by a manager or employee of a recognised body in connection with that body's business;

283 (5) is a manager of a recognised body;

284 (6) has or intends to acquire an interest in such a body: Solicitors Act 1974 s 43(1A) (as prospectively substituted: see note 1).

As to the meaning of 'recognised body' see the Administration of Justice Act 1985 s 9; and PARA 687 note 3 (definition applied by s 43(5A) (prospectively added by the Legal Services Act 2007 Sch 16 para 42(4))).

10 See note 9.

11 Solicitors Act 1974 s 43(1)(b) (as prospectively substituted: see note 1). The Authority may also make provision with regard to the payment of charges: see s 43(2A)-(2C); and PARA 927. It is not necessary that a solicitor should have been found guilty or punished before his clerk can be dealt with by the Tribunal: *Re A Solicitor's Clerk* [1956] 2 All ER 242, [1956] 1 WLR 547, DC. 'Connivance' does not refer to the conduct of the person before the Tribunal but rather to the state of mind of the employing solicitor, and must be broader than simple knowledge or consent: *Gregory v Law Society* [2007] EWHC 1724 (Admin), [2007] All ER (D) 361 (Jun), DC.

12 ie an order under the Solicitors Act 1974 s 43(2) (as prospectively substituted) (see PARA 927).

13 See the Solicitors Act 1974 s 43(1), (2) (as prospectively substituted); and PARA 927.

UPDATE

926-927 Grounds for application, Orders prohibiting the employment or remuneration of certain person

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(vi) Adverse Applications/C. APPLICATIONS IN RESPECT OF SOLICITORS' EMPLOYEES ETC/927. Orders prohibiting the employment or remuneration of certain persons.

927. Orders prohibiting the employment or remuneration of certain persons.

Until a day to be appointed the following provisions have effect¹. The Solicitors Disciplinary Tribunal² or the Solicitors Regulation Authority³ may order⁴ that, as from a specified date no solicitor is to employ or remunerate, in connection with his practice as a solicitor, the person with respect to whom the order is made⁵, except in accordance with permission in writing granted by the Solicitors Regulation Authority⁶ for such period and subject to such conditions as the Authority thinks fit to specify in the permission⁷.

As from a day to be appointed the following provisions have effect⁸. The Authority or the Tribunal may make an order⁹ stating one or more of the following:

1354 (1) except in accordance with the Authority's permission¹⁰, as from the specified date¹¹:

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- 50. (a) no solicitor is to employ or remunerate, in connection with his practice as a solicitor, the person with respect to whom the order is made;
- 51. (b) no employee of a solicitor is to employ or remunerate, in connection with the solicitor's practice, the person with respect to whom the order is made;
- 52. (c) no recognised body¹² is to employ or remunerate that person; and
- 53. (d) no manager¹³ or employee of a recognised body is to employ or remunerate that person in connection with the business of that body¹⁴;

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1355 (2) that as from the specified date no recognised body or manager or employee of such a body is to permit the person with respect to whom the order is made to be a manager of the body, except in accordance with the Authority's permission¹⁵;

1356 (3) that as from the specified date no recognised body or manager or employee of such a body is to permit the person with respect to whom the order is made to have an interest in the body¹⁶, except in accordance with the Authority's permission¹⁷.

¹ The Solicitors Act 1974 s 43(2) is substituted and s 43(2A)-(2C), (5A), (5B) is added by the Legal Services Act 2007 Sch 16 para 42 and the Administration of Justice Act 1985 Sch 2 para 11 is repealed by the Legal Services Act 2007 Sch 16 para 98, Sch 23 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such days had been appointed.

² As to the Tribunal see PARA 906.

³ The Solicitors Act 1974 s 43 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

⁴ Where the Authority investigates whether there are grounds for making, or making an application to the Tribunal for it to make, an order under the Solicitors Act 1974 s 43(2) with respect to a person, the Authority may direct him to pay to the Authority an amount which is calculated by the Authority as the cost to the Authority of investigating the matter or in the opinion of the Authority represents a reasonable contribution

towards that cost: s 43(1A) (added by the Access to Justice Act 1999 Sch 7 para 7(3); and prospectively substituted (see note 1)).

5 This applies to persons who fall within the Solicitors Act 1974 s 43(1) (see PARA 926).

6 Any such permission must be given to the solicitor: see *Re A Solicitor's Clerk* (1960) Times, 12 November, DC, where the court expressed misgivings as to the extent of the power.

7 See the Solicitors Act 1974 s 43(2); and the Administration of Justice Act 1985 Sch 2 para 11(2) (amended by the Access to Justice Act 1999 Sch 7 para 10(a); and prospectively repealed). Orders made under these provisions by the Authority, or made, varied or confirmed by the Tribunal and filed with the Authority, may be inspected during office hours without payment but, until a day to be appointed, are not open to the inspection of any person other than a solicitor: Solicitors Act 1974 s 43(5) (amended by the Access to Justice Act 1999 Sch 7 para 7(6) and prospectively amended by the Legal Services Act 2007 Sch 16 para 42(3), Sch 23); Administration of Justice Act 1985 Sch 11(3) (as so prospectively repealed). The Tribunal will not make an order under the Solicitors Act 1974 s 43(2) merely because the respondent to the proceedings has admitted the allegations: *Re a Solicitor's Clerk, Decision 5281* (1994) 91 LS Gaz (13 April) 46, Solicitors Disciplinary Tribunal. As to the meaning of 'recognised body' see PARA 687 note 3. As to the quashing, variation or confirmation of the order see the Solicitors Act 1974 s 43(3A); and PARA 928. For the purposes of the Administration of Justice Act 1985 s 43(5) 'solicitor' includes a recognised body: see the Administration of Justice Act 1985 Sch 2 para 11(3) (as so prospectively repealed).

An application made under the Solicitors Act 1974 s 43(2) must be in the form set out in the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, Schedule, Form 2: r 8(1). In a case where the Authority has applied to the Tribunal for an order under the Solicitors Act 1974 s 43(2) the solicitor, recognised body or registered European lawyer by or for whose benefit the respondent is employer or remunerated may also be named or joined as a respondent to the application and must be joined as a respondent if the Tribunal so directs: r 8(2). The provisions of r 5(2), (3) (see PARA 908) and r 6(1)-(5) (see PARA 911) apply to every application made under the Solicitors Act 1974 s 43(2): Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 8(3). As to the service of documents under r 8 see r 10; and PARA 911 note 8.

The Tribunal may make an order as to the payment of costs by any party to the application: Solicitors Act 1974 s 43(4). Costs may not be ordered where the respondent makes an early admission, is very co-operative with the investigation, and adopts a very responsible attitude: *Re Paul Hamilton Hatch (a Solicitor's Clerk), Decision 5289* (1994) 91 LS Gaz (8 June) 28, Solicitors Disciplinary Tribunal.

8 See note 1.

9 The Authority may make regulations prescribing charges to be paid to the Authority by persons who are the subject of an investigation by the Authority as to whether there are grounds for the Authority to make an order under the Solicitors Act 1974 s 43(2) or to make an application to the Tribunal for it to make such an order: s 43(2A) (as prospectively added: see note 1). Such regulations may make different provision for different cases or purposes and provide for the whole or part of the charge payable under the regulations to be repaid in such circumstances as may be prescribed: s 43(2B) (as so prospectively added). Any charge which a person is required to pay under regulations under s 43(2A) is recoverable as a debt to the Authority: see s 43(2C) (as so prospectively added).

10 'Authority's permission' means permission in writing granted by the Authority for such period and subject to such conditions as the Authority may think fit to specify in the permission: Solicitors Act 1974 s 43(5A) (as prospectively added: see note 1).

11 'Specified date' means such a date as may be specified in the order: Solicitors Act 1974 s 43(5A) (prospectively added: see note 1).

12 As to the meaning of 'recognised body' see the Administration of Justice Act 1985 s 9; and PARA 687 note 3 (definition applied by the Solicitors Act 1974 s 5A (as prospectively added: see note 1)).

13 As to the meaning of 'manager', in relation to a recognised body, see the Legal Services Act 2007 s 207; and PARA 369 note 17 (definition applied by the Solicitors Act 1974 s 5A (as prospectively added: see note 1)).

14 Solicitors Act 1974 s 43(2)(a) (as prospectively substituted: see note 1).

15 Solicitors Act 1974 s 43(2)(b) (as prospectively substituted: see note 1).

16 As to when a person has an interest in a recognised body for the purposes of the Solicitors Act 1974 s 43 see the Legal Services Act 2007 ss 72, 109; and PARA 1477 note 3 (definition applied by the Solicitors Act 1974 s 5B (as prospectively added: see note 1)).

17 Solicitors Act 1974 s 43(2)(c) (as prospectively substituted: see note 1).

UPDATE

926-927 Grounds for application, Orders prohibiting the employment or remuneration of certain person

Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(vi) Adverse Applications/C. APPLICATIONS IN RESPECT OF SOLICITORS' EMPLOYEES ETC/928. Revocation of orders restricting employment or remuneration.

928. Revocation of orders restricting employment or remuneration.

Where an order has been made restricting the employment or remuneration of a person¹ that person may make an application to the Solicitors Disciplinary Tribunal² for it to be reviewed and whichever of the Solicitors Regulation Authority³ or the Tribunal made it may at any time revoke it⁴. On the review of such an order the Tribunal may order the quashing of the order, the variation of the order or the confirmation of the order⁵. However where, in the opinion of the Tribunal, no prima facie case for quashing or varying the order is shown, the Tribunal may order its confirmation without hearing the applicant⁶.

1 le an order under the Solicitors Act 1974 s 43(2): see PARA 927.

2 As to the Tribunal see PARA 906.

3 The Solicitors Act 1974 s 43 refers to the 'Society' (ie the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

4 Solicitors Act 1974 s 43(3) (substituted by the Access to Justice Act 1999 Sch 7 para 7(5)). Every application under the Solicitors Act 1974 s 43(3) must be served on the Solicitors Regulation Authority and the Authority must file with the clerk a statement setting out the facts and matters on which it relied in making the order under the Solicitors Act 1974 s 43(2): Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588, r 8(5). The Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588 refer to the 'Law Society'. However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority. See also *Re John William Burrows, Application 6449/1993* (1994) 91 LS Gaz (19 October) 38, Solicitors Disciplinary Tribunal.

5 Solicitors Act 1974 s 43(3A)(a)-(c) (added by the Access to Justice Act 1999 Sch 7 para 7(5)). Orders made, varied or confirmed by the Tribunal and filed with the Authority, may be inspected during office hours without payment but, until a day to be appointed, are not open to the inspection of any person other than a solicitor: s 43(5) (amended by the Access to Justice Act 1999 Sch 7 para 7(6) and prospectively amended by the Legal Services Act 2007 Sch 16 para 42(3), Sch 23).

6 Solicitors Act 1974 s 43(3A) (as added: see note 5).

UPDATE

928 Revocation of orders restricting employment or remuneration

NOTE 5--Amendment in force 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(vi) Adverse Applications/C. APPLICATIONS IN RESPECT OF SOLICITORS' EMPLOYEES ETC/929. Effect of order controlling employment and remuneration.

929. Effect of order controlling employment and remuneration.

Where an order restricting the employment or remuneration of a person¹ is in force in respect of a person, then if any solicitor knowingly acts in contravention of that order or of any conditions subject to which permission² has been granted under it, a complaint may be made in respect of that contravention to the Solicitors Disciplinary Tribunal³ by or on behalf of the Solicitors Regulation Authority⁴.

Until a day to be appointed the following provisions have effect⁵. Any person who, while there is in force in respect of him an order of the Tribunal⁶, seeks or accepts any employment by or remuneration from a solicitor in connection with that solicitor's practice, or a recognised body⁷ in connection with that body's business, without previously informing him or it of that order, is guilty of an offence⁸.

As from a day to be appointed the following provisions have effect⁹. It is an offence for a person in respect of whom there is in force an order restricting his employment or remuneration¹⁰:

- 1357 (1) to seek or accept any employment or remuneration from a solicitor, or an employee of a solicitor, in connection with the practice carried on by that solicitor without previously informing the solicitor or employee of the order;
- 1358 (2) to seek or accept any employment or remuneration from a recognised body, or a manager or employee of a recognised body, in connection with that body's business, without previously informing the body, or manager¹¹ or employee, of the order¹².

It is an offence for a person in respect of whom there is in force an order which contains a provision restricting him from being a manager of a recognised body¹³ to seek or accept a position as a manager of a recognised body, without previously informing that body of the order¹⁴.

It is an offence for a person in respect of whom there is in force an order which contains a provision restricting him from having an interest in a recognised body¹⁵ to seek or accept an interest in a recognised body¹⁶ from any person, without previously informing that person and (if different) the recognised body of the order¹⁷.

1 le an order under the Solicitors Act 1974 s 43(2) (see PARA 927): Solicitors Act 1974 s 44(2) (amended by the Access to Justice Act 1999 Sch 7 para 8). Any document purporting to be an order under the Solicitors Act 1974 s 43(2), and to be duly signed in accordance with s 48(1) (see PARA 915) must be received in evidence in any proceedings under s 44 and be deemed to be such an order without further proof unless the contrary is shown: s 44(3). Section 44(3) applies to proceedings under the Administration of Justice Act 1985 s 9(6), Sch 2 s it applies in relation to proceedings under the Solicitors Act 1974 s 44: Administration of Justice Act 1985 Sch 2 para 12(1)(b).

2 Until a day to be appointed this applies to permission for the employment of that person and as from a day to be appointed permission for the taking of any action: see the Solicitors Act 1974 s 44(2) (prospectively amended by the Legal Services Act 2007 Sch 16 para 43(b)).

3 As to the Tribunal see PARA 906.

4 Solicitors Act 1974 s 44(2) (as amended and prospectively amended (see notes 2, 3)). The Solicitors Act 1974 s 44 refers to the 'Society' (ie the Law Society of England and Wales (see the Solicitors' Accounts Rules 1998 r 2(2)(w); and PARA 602 note 4)). However in practice the body currently responsible for the regulation of solicitors and such rules is the Solicitors Regulation Authority (see PARA 619).

5 The Solicitors Act 1974 s 44(1) is substituted and s 44(1A)-(1C), (5) added by the Legal Services Act 2007 Sch 16 para 43 as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

6 Ie an order under the Solicitors Act 1974 s 43(2): see PARA 927.

7 As to the meaning of 'recognised body' see the Administration of Justice Act 1985 s 9; and PARA 687 note 3 (definition applied by the Solicitors Act 1974 s 44(5) (prospectively added by the Legal Services Act 2007 Sch 16 para 43(c))).

8 Solicitors Act 1974 s 44(1); the Administration of Justice Act 1985 Sch 2 para 12(1)(a). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Solicitors Act 1974 s 44(1) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see PARA 571 note 1. Notwithstanding anything in the Magistrates' Courts Act 1980, proceedings under the Solicitors Act 1974 s 44(1) may be commenced at any time before the expiration of six months from the first discovery of the offence by the prosecutor, but no such proceedings may be commenced, except with the consent of the Director of Public Prosecutions, by any person other than the Solicitors Regulation Authority or a person acting on behalf of the Authority: Solicitors Act 1974 s 44(4) (amended by the Magistrates' Courts Act 1980 s 154, Sch 7 para 132).

9 See note 1.

10 Ie an order under the Solicitors Act 1974 s 43(2) which contains provisions within s 43(2)(a) (see PARA 927).

11 As to the meaning of 'manager' see the Legal Services Act 2007 s 207, the Solicitors Act 1974 ss 43(5A); and PARA 369 note 17 (definition applied by the Solicitors Act 1974 s 44(5) (as prospectively added (see note 5))).

12 Solicitors Act 1974 s 44(1) (as prospectively substituted: see note 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 44(1C) (as prospectively added: see note 5).

13 Ie an order under the Solicitors Act 1974 s 43(2) (see PARA 927).

14 Solicitors Act 1974 s 44(1A) (as prospectively added: see note 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 44(1C) (as prospectively added: see note 5).

15 Ie an order under the Solicitors Act 1974 s 43(2) which contains provisions within s 43(2)(c) (see PARA 927).

16 For these purposes a person seeks or accepts an interest in a recognised body if the person seeks or accepts an interest which if it were obtained by the person would result in the person having an interest in that body within the meaning of the Legal Services Act 2007 Pt 5 (see ss 72, 109 and PARA 1477): Solicitors Act 1974 s 5 (as prospectively added: see note 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 44(1C) (as prospectively added: see note 5).

17 Solicitors Act 1974 s 44(1B) (as prospectively added: see note 5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 44(1C) (as prospectively added: see note 5).

UPDATE

929 Effect of order controlling employment and remuneration

NOTES 2, 5--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(8) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(vi) Adverse Applications/C. APPLICATIONS IN RESPECT OF SOLICITORS' EMPLOYEES ETC/930. Tribunals powers in relation to solicitor's employees.

930. Tribunals powers in relation to solicitor's employees.

As from a day to be appointed the following provisions have effect¹. On the hearing of any complaint made to the Solicitors Disciplinary Tribunal in relation to the failure of an employee to comply with rules which have effect in relation to him² the Tribunal has power to make one or more of the following:

- 1359 (1) an order directing the payment by the employee to whom the complaint relates of a penalty to be forfeited to Her Majesty³;
- 1360 (2) an order requiring the Solicitors Regulation Authority⁴ to consider taking such steps as the Tribunal may specify in relation to that employee⁵;
- 1361 (3) if that employee is not a solicitor, an order⁶ restricting the employment of that person⁷;
- 1362 (4) an order requiring the Authority to refer to an appropriate regulator⁸ any matter relating to the conduct of that employee⁹.

1 The Solicitors Act 1974 s 47(2E)-(2H) is added by the Legal Services Act 2007 Sch 16 para 49(f) as from a day to be appointed under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 I.e a complaint made by virtue of the Solicitors Act 1974 s 34A(2) or s 34A(3) (see PARA 622).

3 Solicitors Act 1974 s 47(2E)(a) (as added: see note 1).

4 The Solicitors Act 1974 s 47 refers to the 'Society' (i.e the Law Society elected in accordance with provisions of the Charter and the Solicitors Act 1974 (see s 87(1); and PARA 602 note 4)). However in practice the body responsible for the regulation of solicitors is the Solicitors Regulation Authority (see PARA 619).

5 Solicitors Act 1974 s 47(2E)(b) (as added: see note 1).

6 I.e an order which states one or more of the matters mentioned in the Solicitors Act 1974 s 43(2)(a)-(c) (see PARA 927).

7 Solicitors Act 1974 s 47(2E)(c) (as added: see note 1). The provisions of the Solicitors Act 1974 s 44(1)-(1C), (3), (4) apply in relation to an order under s 47(2E)(c) as they apply in relation to an order under s 43(2): s 47(2F) (as so added). The Solicitors Act 1974 s 44(2) (see PARA 929), the Administration of Justice Act 1985 Sch 2 para 16(1)(d), (1A)(d) (see PARA 712) and the Courts and Legal Services Act 1990 Sch 14 para 15(3A) (see PARA 725) apply in relation to an order under the Solicitors Act 1974 s 47(2E)(c) as they apply in relation to an order under s 43(2): s 47(2G) (as so added).

8 For the purposes of the Solicitors Act 1974 s 47(2E)(d) 'appropriate regulator' in relation to an employee means:

- 285 (1) if the employee is an authorised person in relation to a reserved legal activity any relevant approved regulator in relation to that employee (s 47(2H)(a)); and
- 286 (2) if the employee carries on activities which are not reserved legal activities any body which regulates the carrying on of such activities by the employee (s 47(2H)(b)).

As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'relevant approved regulator' see PARA 358.

9 Solicitors Act 1974 s 47(2E)(d) (as added: see note 1).

UPDATE

930 Tribunals powers in relation to solicitor's employees

TEXT AND NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(i) Generally/931. Statutory provision.

(9) REMUNERATION

(i) Generally

931. Statutory provision.

The enforceability at the instance of a solicitor of an agreement between him and his client fixing the amount and manner of the solicitor's remuneration for professional business on the client's behalf depends upon statute¹. The statutory provisions are concerned with the enforcement² of such agreements rather than with their validity³.

Unless the relevant provisions are complied with the solicitor cannot avail himself of the benefits and privileges conferred by statute⁴. The client who sets up an agreement with the solicitor relating to contentious business is not bound to show that it has been made in accordance with the statutory terms before he can enforce it unless he claims a benefit given by the statute⁵ because his right to make an agreement at common law is not affected by the statute⁶. However the position as regards non-contentious business is entirely regulated by statute⁷.

1 *Re Russell Son and Scott* (1885) 30 Ch D 114, 52 LT 794 per Kay J; *Clare v Joseph* [1907] 2 KB 369, CA. For the statutory provisions see the Solicitors Act 1974 s 57 (non-contentious business: see PARAS 942-943) and s 59 (contentious business: see PARA 945 et seq). As to the meaning of 'contentious business' and 'non-contentious business' see PARA 933 notes 2, 4. It seems that these provisions cannot be avoided by the solicitor taking his client's cheque and suing upon it: see *Martin, Boston and Co (a firm) v Levy* [1982] 3 All ER 193, [1982] 1 WLR 1434. The CPR Pts 44-48 apply to costs payable by a client to his solicitor: see CPR 43.2(2)(a)(iii); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1734.

2 *Re Jones* [1896] 1 Ch 222, CA; *Clare v Joseph* [1907] 2 KB 369, CA; *Gundry v Sainsbury* [1910] 1 KB 645, CA; *Electrical Trades Union v Tarlo* [1964] Ch 720, [1964] 2 All ER 1 (an unwritten agreement covering both contentious and non-contentious business).

3 The distinction is of importance for if the agreement is found not to comply with the provisions of the Solicitors Act 1974 s 57 or s 59 an action may still be brought once the provisions of s 69 (see PARA 956 et seq) have been complied with: *Martin, Boston and Co (a firm) v Levy* [1982] 3 All ER 193 at 198, [1982] 1 WLR 1434 at 1439 per Warner J.

4 *Clare v Joseph* [1907] 2 KB 369, CA.

5 *Clare v Joseph* [1907] 2 KB 369 at 377, CA.

6 *Clare v Joseph* [1907] 2 KB 369 at 376, CA, per Fletcher Moulton LJ. See also *Tabram v Horn* (1827) 1 Man & Ry KB 228; *Turner v Tennant* (1846) 10 Jur 429n; *Morgan v Taylor* (1859) 5 CBNS 653; *Collins v Brook* (1859) 4 H & N 270; *Moon v Hall* (1864) 17 CBNS 760; *Jennings v Johnson* (1873) LR 8 CP 425; *Ibberson v Neck* (1886) 2 TLR 427; *Electrical Trades Union v Tarlo* [1964] Ch 720, [1964] 2 All ER 1. The agreement may have a special significance for an opponent in litigation because as inter partes costs are awarded as an indemnity, an opponent ordered to pay costs will not be bound to pay anything if there has been an agreement (oral or written) by the solicitor not to charge the client: see the Solicitors Act 1974 s 60(3); *Gundry v Sainsbury* [1910] 1 KB 645, CA; and *British Waterways Board v Norman* (1993) 26 HLR 232, DC. It is, however, possible to frame an agreement so as to avoid this consequence: see *McLean v Carlisle* (1917) 61 Sol Jo 399, HL. A solicitor may thus bind himself by an oral agreement to charge nothing for contentious business (see *Re A Solicitor* [1956] 1 QB 155, [1955] 3 All ER 305) except out-of-pocket expenses (*Jones v Reade* (1836) 5 Ad & El 529) or nothing at all (*Turver v Tennant*). A solicitor may also charge on a conditional fee basis: see PARA 1309.

7 See the Solicitors Act 1974 s 57; and PARA 942 et seq. Where an oral agreement relates to both contentious and non-contentious business, the client may enforce that part of it which relates to contentious business: *Electrical Trades Union v Tarlo* [1964] Ch 720, [1964] 2 All ER 1.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(i) Generally/932. Information to be provided to the client.

932. Information to be provided to the client.

A solicitor is under a duty to provide his client with the best information about the overall cost of a matter both at the outset and when appropriate as the matter progresses¹. In particular the solicitor must advise the client of the basis and terms of the charges (and if such charges are to be increased) and any likely payments to others². A solicitor must discuss with his client how the client will pay³ and whether their liability for another's costs may be covered by existing insurance or whether specially purchased insurance may be obtained⁴.

A solicitor must also discuss with his client whether the potential outcomes of any legal case will justify the expense or risk involved including the risk of having to pay an opponent's costs⁵.

Where a solicitor is acting for a publicly funded client he must explain the following at the outset:

- 1363 (1) the circumstances in which they may be liable for the solicitor's costs;
- 1364 (2) the effect of the statutory charge⁶;
- 1365 (3) the client's duty to pay any fixed or periodic contribution assessed and the consequence of failing to do so; and
- 1366 (4) that even if the client is successful, the other party may not be ordered to pay costs or may not be in a position to pay them⁷.

1 Solicitors' Code of Conduct 2007 r 2.03(1). Any information about the cost must be clear and confirmed in writing: r 2.03(5). Where a solicitor can demonstrate that it was inappropriate in the circumstances to meet some or all of the requirements in r 2.03(1) and r 2.03(5) he will not breach r 2.03: r 2.03(7). A solicitor is not bound to the terms of an estimate provided but any estimate of costs could be taken into consideration as a yardstick for determining what is reasonable: see *Mastercigars Direct Ltd v Withers LLP* [2007] EWHC 2733 (Ch), [2008] 3 All ER 417.

2 See the Solicitors' Code of Conduct 2007 r 2.03(1)(a)-(c), (f). The solicitor must also advise that there are circumstances where a lien may be exercised for unpaid costs: see r 2.03(1)(e); and PARA 996. A client who approaches a solicitor's firm for legal advice from a solicitor will not be liable to pay the firm's fees if he is, in fact, advised by an unqualified representative of that firm: *Pilbrow v Pearlless De Rougemont & Co* [1999] 3 All ER 355, [1999] 2 FLR 139, CA.

3 See the Solicitors' Code of Conduct 2007 r 2.03(1)(d). In particular this should include whether the client is entitled to public funding or whether costs can be met by insurance payments or by others (ie employer or trade union).

4 See the Solicitors' Code of Conduct 2007 r 2.03(1)(g).

5 Solicitors' Code of Conduct 2007 r 2.03(6).

6 As to the statutory charge see **LEGAL AID** vol 65 (2008) PARA 99 et seq.

7 See the Solicitors' Code of Conduct 2007 r 2.03(3).

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933. Non-contentious and contentious business.

The remuneration of a solicitor for professional work done by him for a client¹ is governed, as regards contentious business², either by statute, rules of court and regulations applying to the particular proceedings, or under the inherent jurisdiction of the Tribunal before which the proceedings are taken³; and as regards non-contentious business⁴, by statute and orders made under statutory authority⁵.

The statutory provisions⁶ relating to the remuneration of solicitors in respect of contentious and non-contentious business apply to the remuneration of a recognised body⁷ in respect of such business, with certain necessary modifications⁸.

1 As to the meaning of 'client' see PARA 835 note 6.

2 'Contentious business' means business done, whether as solicitor or advocate, in or for the purposes of proceedings begun before a court or before an arbitrator not being business which falls within the definition of non-contentious or common form probate business in the Supreme Court Act 1981 s 128: Solicitors Act 1974 s 87(1) (amended by the Administration of Justice Act 1985 Sch 1 para 12(a) and the Arbitration Act 1996 Sch 4). 'Non-contentious or common form probate business' means the business of obtaining probate and letters of administration where there is no contention as to the right thereto, including:

287 (1) the passing of probates and administrations through the High Court in contentious cases where the contest has been terminated;

288 (2) all business of a non-contentious nature in matters of testacy and intestacy, not being proceedings in any action; and

289 (3) the business of lodging caveats against the grant of probate or administration: Supreme Court Act 1981 s 128.

For there to be 'contentious business' proceedings must be 'begun'. Business done for the purpose of proceedings contemplated but not instituted is non-contentious business: *Re Simpkin Marshall Ltd* [1959] Ch 229, [1958] 3 All ER 611. As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981 (see the Constitutional Reform Act 2005 Sch 11 para 1) and the reference in the definition of contentious business is amended accordingly by the Constitutional Reform Act 2005 Sch 11 para 21(6). At the date at which this volume states the law no such day had been appointed.

3 Eg the detailed assessment incurred in the liquidation of a limited company (*Re Foss, Bilbrough, Plaskitt and Foss* [1912] 2 Ch 161, 81 LJ Ch 558) and the control of the House of Lords over appellate proceedings (*West Ham Union Guardians v Churchwardens etc of St Matthew, Bethnal Green* [1896] AC 477 at 489, HL).

4 'Non-contentious business' means any business done as a solicitor which is not contentious business as defined in the Solicitors Act 1974 (see note 2): s 87(1).

5 Ie by Solicitors Act 1974 Pt III (ss 56-75) and the orders made under it: see PARA 936 et seq. Nothing in Pt III affects any of the provisions of the Prosecution of Offences Act 1985 ss 16-21 (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(4) (2006 Reissue) PARA 2058 et seq) or any other enactment not expressly repealed by the Solicitors Act 1974 which authorises the making of rules or orders or the giving of directions with respect to costs, or which provides that any such rule, order or direction made or given under a previous enactment is to continue in force: s 75(c), (e); Interpretation Act 1978 s 17(2)(b).

6 Ie the Solicitors Act 1974 s 56 (except s 56(1)(e), (5)) (see PARA 936); ss 57-59 (see PARAS 941-942, 945); s 60 (see PARAS 946-947) (except s 60(5)) (see PARA 946); ss 61, 62 (see PARAS 948-949); s 64 (see PARA 958); s 65 (see PARA 990); s 67 (see PARA 964); s 69(1) (see PARA 956); and ss 70-74 (see PARAS 971 et seq, 1011): Administration of Justice Act 1985 Sch 2 para 22(2).

7 As to the meaning of 'recognised body' see PARA 687 note 3.

8 See the Administration of Justice Act 1985 Sch 2 para 22. In the provisions to which Sch 2 para 22 applies (see note 6):

290 (1) any reference to a solicitor or to a client of a solicitor is to be construed as including a reference to a recognised body or to a client of such a body; and

291 (2) any reference to a client's solicitor is to be construed as including a reference to any recognised body acting for a client: Sch 2 para 22(1).

UPDATE

933 Non-contentious and contentious business

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604. In s 87(1) business 'in ... proceedings begun before a court' refers to work done in the actual litigation, while work 'for the purposes of proceedings' might be carried out before the proceedings were begun or during the proceedings; the phrase 'for the purposes of' requires the proceedings to be contemporaneous with the work in question or to be in the future: *Bilkus v Stockler Brunton (a firm)* [2010] EWCA Civ 101, [2010] All ER (D) 182 (Feb).

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934. Pro bono representation.

The following applies to proceedings in a civil court¹ in which a party to the proceedings is or was represented by a legal representative² and that representation is or was provided free of charge³, in whole or in part⁴. The court may order any person to make a payment to a charity prescribed by the Lord Chancellor⁵ in respect of that representation (or, if only part of the representation was provided free of charge, in respect of that part)⁶.

In considering whether to make such an order and the terms of such an order, the court must have regard to whether, had the representation not been provided free of charge, it would have ordered the person to make a payment to the party being represented in respect of the costs payable to the representative by him in respect of that representation and, if it would, what the terms of the order would have been⁷.

1 For these purposes 'civil court' means the civil division of the Court of Appeal, the High Court, or any county court: Legal Services Act 2007 s 194(10).

2 For these purposes 'legal representative', in relation to a party to proceedings, means a person exercising a right of audience or conducting litigation on the party's behalf: Legal Services Act 2007 s 194(10).

3 For these purposes 'free of charge' means otherwise than for or in expectation of fee, gain or reward: Legal Services Act 2007 s 194(10).

4 Legal Services Act 2007 s 194(1). Section 194 applies to such proceedings even if P is or was also represented by a legal representative not acting free of charge: s 194(2).

5 An order may only be made prescribing a charity which is registered in accordance with the Charities Act 1993 s 3 (see **CHARITIES** vol 8 (2010) PARA 315 et seq) and provides financial support to persons who provide, or organise or facilitate the provision of legal advice or assistance (by way of representation or otherwise) which is free of charge: Legal Services Act 2007 s 194(9). As from a day to be appointed (ie the day on which the Charities Act 1993 s 3A comes into force) the reference to the Charities Act 1993 s 3 is to read s 3A: see the Legal Services Act 2007 (Transitory Provision) Order 2008, SI 2008/1799. At the date at which this volume states the law no such day had been appointed.

6 Legal Services Act 2007 s 194(3), (8). The court may not make such an order against a person represented in the proceedings if the person's representation was at all times provided by a legal representative acting free of charge or funded by the Legal Services Commission as part of the Community Legal Service: s 194(5). Nor may a court make such an order in respect of representation if (or to the extent that) it is provided before s 194 comes into force: s 194(11). As to orders made under s 194(3) see further PARA 935. Where a right to a costs order is deemed to be made in favour of a party with pro bono representation, that party may apply for an order under s 194(3): CPR 44.12(1A). However, subject to exceptions, where the court makes an order which does not mention costs the general rule is that no party is entitled to seek an order under the Legal Services Act 2007 s 194(3): see CPR 44.13(1)(a); and **CIVIL PROCEDURE** vol 12 (2009) para 1756. The Access to Justice Foundation (charity registration number 1126147) is a charity prescribed for the purposes of the Legal Services Act 2007 s 194(8) as of 3 November 2008: see the Legal Services Act 2007 (Prescribed Charity) Order 2008, SI 2008/2680.

7 Legal Services Act 2007 s 194(4). Rules of court may make further provision as to the making of orders under s 194(3), and may in particular:

292 (1) provide that such orders may not be made in civil proceedings of a description specified in the rules (s 194(7)(a));

293 (2) make provision about the procedure to be followed in relation to such orders (s 194(7)(b));

294 (3) specify matters (in addition to those mentioned in s 194(4)) to which the court must have regard in deciding whether to make such an order, and the terms of any order (s 194(7)(4)(c)).

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935. Orders in respect of pro bono representation.

Where the court makes an order in respect of pro bono representation¹:

- 1367 (1) the court may order the payment to the prescribed charity of a sum no greater than those specified in the relevant fixed costs provisions² to which the party with pro bono representation would have been so entitled and in respect of that representation had it not been provided free of charge³; or
- 1368 (2) where the fixed costs provisions⁴ do not apply, the court may determine the amount of the payment (other than a sum equivalent to fixed costs) to be made by the paying party to the prescribed charity by making a summary assessment, or making an order for detailed assessment⁵, of a sum equivalent to all or part of the costs the paying party would have been ordered to pay to the party with pro bono representation in respect of that representation had it not been provided free of charge⁶.

Where the court makes an order in respect of pro bono representation⁷ the order must specify that the payment by the paying party must be made to the prescribed charity⁸. The receiving party must send a copy of the order to the prescribed charity within seven days of receipt of the order⁹.

1 le an order under the Legal Services Act 2007 s 194(3) (see PARA 934): CPR 44.3C(1). Where the court considers making or makes an order under the Legal Services Act 2007 s 194(3) CPR 43-48 apply, where appropriate, with modifications: see CPR 44.3C(5).

2 le the costs specified in CPR Pt 45 (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1760 et seq).

3 CPR 44.3C(2)(a).

4 See note 2.

5 As to the meanings of 'summary assessment' and 'detailed assessment' see PARA 967. The CPR Pt 47 (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1779 et seq) applies where a costs officer is to make a detailed assessment of the sum payable by one party to the prescribed party pursuant to an order under the Legal Services Act 2007 s 194(3): CPR 47.5.

6 CPR 44.3C(2)(b).

7 See note 1.

8 CPR 44.3C(3).

9 CPR 44.3C(4).

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(ii) Non-contentious Business

936. Non-contentious business remuneration orders.

The remuneration of solicitors in respect of non-contentious business¹ is prescribed and regulated by orders² made by a committee consisting of the Secretary of State³, the Lord Chief Justice⁴, the Master of the Rolls⁵, the president of the Law Society⁶, the president of a local law society⁷ as nominated⁸, so far as concerns business relating to land registration⁹ the Chief Land Registrar¹⁰ and, as from a day to be appointed, a member of the Legal Services Board nominated by that Board¹¹. Any three members of the committee may make a remuneration order in respect of non-contentious business¹². Before an order is made a draft must be sent to the Law Society¹³ and the committee must consider any written observations submitted by the Society within one month¹⁴. Assessment of solicitors' bills of costs is regulated by these non-contentious business remuneration orders¹⁵.

The principles prescribed by such an order may provide that a solicitor should be remunerated¹⁶ by a gross sum; or by a fixed sum for each document prepared or perused¹⁷; or in any other mode; or partly in one mode and partly in another¹⁸. The general principles prescribed by such an order may provide that the amount of remuneration is to be determined by having regard to all or any of certain prescribed considerations among others¹⁹. The order may also authorise and regulate the taking of security by a solicitor from his client for payment of any remuneration to become due under any such order and the allowance of interest²⁰. The current order is the Solicitors' (Non-Contentious Business) Remuneration Order 1994 which applies to all non-contentious business for which bills are delivered on or after 1 November 1994²¹ and to the remuneration of recognised bodies as well as to that of solicitors²².

1 As to the meaning of 'non-contentious business' see PARA 933 note 4.

2 See the Solicitors Act 1974 s 56(2).

3 Solicitors Act 1974 s 56(1)(a) (amended by SI 2003/1887). As from a day to be appointed the duty of the Secretary of State in this context is replaced by that of the Lord Chancellor: Solicitors Act 1974 s 56(1)(a) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 54(1), (2)(a)). At the date at which this volume states the law no such day had been appointed.

4 Solicitors Act 1974 s 56(1)(b).

5 Solicitors Act 1974 s 56(1)(c).

6 Solicitors Act 1974 s 56(1)(d).

7 I.e. a solicitor who is the president of a local law society, nominated by the Secretary of State to serve on the committee during his tenure of office as president: Solicitors Act 1974 s 56(1)(e) (amended by SI 2003/1887) As from a day to be appointed such a person is instead nominated by the Lord Chancellor: see the Solicitors Act 1974 s 56(1)(e) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 54(1), (2)(c)). As to the meaning of 'local law society' see PARA 618 note 5. At the date at which this volume states the law no such day had been appointed.

8 Solicitors Act 1974 s 56(1)(e).

9 I.e. under the Land Registration Act 2002: see **LAND REGISTRATION**.

10 Solicitors Act 1974 s 56(1)(f) (amended by the Land Registration Act 2002 Sch 11 para 12(1), (2)).

11 Solicitors Act 1974 s 56(1)(da) (prospectively added by the Legal Services Act 2007 Sch 16 paras 1, 54(1), (2)(d)). As to the Legal Services Board see PARA 303.

12 See the Solicitors Act 1974 s 56(2). Until a day to be appointed the Secretary of State must be included as one of the three members of the committee and the committee has the power to make general orders prescribing and regulating in such manner as they think fit the remuneration of solicitors in respect of non-contentious business: see s 56(2) (amended by SI 2003/1887). However, as from a day to be appointed the Lord Chancellor must be included as one of the three members and the committee may make general orders prescribing the general principles to be applied when determining the remuneration of solicitors in respect of non-contentious business: see the Solicitors Act 1974 s 56(1) (prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 54(1), (3)). At the date at which this volume states the law no such days had been appointed.

13 The draft order is to be sent until a day to be appointed by the Secretary of State and as from a day to be appointed by the Lord Chancellor: see the Solicitors Act 1974 s 56(3) (amended by SI 2003/1887; and prospectively amended by the Legal Services Act 2007 Sch 16 paras 1, 54(1), (4)(a)). At the date at which this volume states the law no such day had been appointed.

14 Solicitors Act 1974 s 56(3) (amended by the Legal Services Act 2007 Sch 16 paras 1, 54(1), (4)(b)). The committee may then make the order, either in the form of the draft or with such alterations or additions as it may think fit: s 56(3). The requirement of consultation under s 56(3) bears no implication that if momentous changes are to be made other bodies must be given an opportunity to make representations: *Bates v Lord Hailsham of St Marylebone* [1972] 3 All ER 1019, [1972] 1 WLR 1373 (where it was also held that the draft was deemed not to have been prepared by the committee itself).

15 See the Solicitors Act 1974 s 56(7) (amended by the Legal Services Act 2007 Sch 16 para 54(9)(b)). This is however subject to the power under the Solicitors Act 1974 s 57 (see PARA 942) to agree remuneration: s 56(7). The Solicitors Act 1974 s 56(7) is prospectively amended by the Legal Services Act 2007 Sch 16 para 54(9)(a) which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

16 Solicitors Act 1974 s 56(4) (amended by the Legal Services Act 2007 Sch 16 para 54(5)).

17 le without regard to length: Solicitors Act 1974 s 56(4)(c).

18 Solicitors Act 1974 s 56(4)(a)-(e).

19 Solicitors Act 1974 s 56(5). These considerations are:

295 (1) the position of the party with whom the solicitor is concerned in the business, that is whether he is vendor or purchaser, lessor or lessee, mortgagor or mortgagee or the like;

296 (2) the place where and the circumstances in which the business or any part of it is transacted;

297 (3) the amount of the capital money or rent to which the business relates;

298 (4) the skill, labour and responsibility on the part of the solicitor which the business involves;

299 (5) the number and importance of the documents prepared or perused without regard to length: s 56(5)(a)-(e).

As from a day to be appointed head (4) is amended as also to include the skill, labour and responsibility of any employee of the solicitor who is an authorised person: see s 56(4)(d) (prospectively amended by the Legal Services Act 2007 Sch 16 para 54(6)(b)).

See further PARA 937. See also *Property and Reversionary Investment Corp Ltd v Secretary of State for the Environment* [1975] 2 All ER 436, [1975] 1 WLR 1504; *Treasury Solicitor v Regester* [1978] 2 All ER 920, [1978] 1 WLR 446; and *Maltby v DJ Freeman & Co* [1978] 2 All ER 913, [1978] 1 WLR 431.

In relation to an order under the Solicitors Act 1974 s 56 regulating (in accordance with the Administration of Justice Act 1985 Sch 2 para 22: see PARA 933) the remuneration of recognised bodies in respect of non-contentious business, the Solicitors Act 1974 s 56(5) has effect as if:

300 (a) in s 56(5)(a) (see head (1)) for 'the solicitor' there were substituted 'the recognised body'; and

301 (b) in s 56(5)(d) (see head (4)) for 'the solicitor' there were substituted 'any solicitor, being an officer or employee of the recognised body': Administration of Justice Act 1985 Sch 2 para 23.

As from a day to be appointed the words 'prescribing (by virtue of the Administration of Justice Act 1985 Sch 2 para 22) general principles to be applied when determining' are substituted for the words 'regulating (in accordance with the Administration of Justice Act 1985 Sch 2 para 22' and head (a) is substituted to read 'in s 56(5)(d) the reference to the solicitor or any employee of the solicitor who is an authorised person were a reference to any manager or employee of the recognised body who is an authorised person' by the Legal Services Act 2007 Sch 16 para 110(b), (c). As to the meaning of 'authorised person' see PARA 515 note 3. At the date at which this volume states the law no such days had been appointed.

20 See the Solicitors Act 1974 s 56(6). The Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 12(3) provides that a solicitor may take from his client security for the payment of any costs including the amount of any interest to which the solicitor may become entitled under art 14: see PARA 986. For these purposes, 'costs' means the amount charged in a solicitor's bill exclusive of disbursements and value added tax in respect of non-contentious business or common form probate business: art 2. As to the meaning of 'non-contentious or common form probate business' see PARA 933 note 4.

21 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 1(2). In respect of bills for non-contentious business delivered prior to 1 November 1994 the Solicitors Remuneration Order 1972, SI 1972/1139, will apply: Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 1(3).

22 See Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 2 ('solicitor' includes a recognised body). As to the application of certain provisions of the Solicitors Act 1974 relating to remuneration to recognised bodies see PARA 933 text and notes 6-8.

UPDATE

936-940 Non-contentious business remuneration orders ... Requirement to pay a sum towards the costs; refunds by solicitor

SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

936 Non-contentious business remuneration orders

NOTES 3, 7--Day appointed is 30 June 2008: SI 2008/1436.

TEXT AND NOTE 11--Day appointed is 1 July 2009: SI 2009/1365.

NOTE 15--Amendment made by Legal Services Act 2007 Sch 16 para 54(9)(a) in force 1 January 2010: SI 2009/3250.

NOTE 19--Amendments made by Legal Services Act 2007 Sch 16 paras 54(6)(b), 110(b), (c) in force 31 March 2009: SI 2009/503.

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937. Basis of charge.

Provision is made by the Solicitors' (Non-Contentious Business) Remuneration Order 1994¹ for solicitors' costs² to be such sum as may be fair and reasonable to both solicitor and entitled person³, having regard to all the circumstances of the case and in particular to:

- 1369 (1) the complexity of the matter or the difficulty or novelty of the questions raised⁴;
 - 1370 (2) the skill, labour, specialised knowledge and responsibility involved⁵;
 - 1371 (3) the time spent on the business⁶;
 - 1372 (4) the number and importance of the documents prepared or perused without regard to length⁷;
 - 1373 (5) the place where and the circumstances in which the business or any part thereof is transacted⁸;
 - 1374 (6) the amount or value of any money or property involved⁹;
 - 1375 (7) whether any land involved is registered land¹⁰;
 - 1376 (8) the importance of the matter to the client¹¹; and
 - 1377 (9) the approval (express or implied) of the entitled person or the express approval of the testator to:
- 530
- 54. (a) the solicitor undertaking all or any part of the work giving rise to the costs; or
 - 531 55. (b) the amount of the costs¹².

1 The Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, which applies to all non-contentious business for which bills are delivered on or after 1 November 1994: art 1(2). As to the meaning of 'non-contentious business' see PARA 933 note 4. As to its application to recognised bodies see PARA 936 text and notes 21-22.

2 As to the meaning of 'costs' see PARA 936 note 20.

3 'Entitled person' means a client or an entitled third party; and 'entitled third party' means a residuary beneficiary absolutely and immediately (and not contingently) entitled to an inheritance where a solicitor has charged the estate for his professional costs for acting in the administration of the estate and either (1) the only personal representatives are solicitors (whether or not acting in a professional capacity); or (2) the only personal representatives are solicitors acting jointly with partners or employees in a professional capacity; and 'residuary beneficiary' includes any person entitled to all or part of the residue of an intestate estate: Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 2. For these purposes, 'client' means the client of a solicitor (including a recognised body): art 2. As to the meaning of 'recognised body' see PARA 687 note 3.

4 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(a).

5 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(b).

6 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(c).

7 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(d).

8 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(e).

9 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(f).

10 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(g). The system of compulsory registration of title on sale of land now extends to the whole of England and Wales with effect from 1 December 1990: see **LAND REGISTRATION** vol 26 (2004 Reissue) PARA 804.

11 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(h).

12 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 3(i). The equivalent principles in the Solicitors Remuneration Order 1972, SI 1972/1139 (revoked), were applied in *Property and Reversionary Investment Corpn Ltd v Secretary of State for the Environment* [1975] 2 All ER 436, [1975] 1 WLR 1504, where it was held that the proper approach was to take a broad look at all the circumstances of the case and then consider systematically the factors specified. See also *Treasury Solicitor v Regester* [1978] 2 All ER 920, [1978] 1 WLR 446; and *Maltby v DJ Freeman & Co* [1978] 2 All ER 913, [1978] 1 WLR 431.

UPDATE

936-940 Non-contentious business remuneration orders ... Requirement to pay a sum towards the costs; refunds by solicitor

SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

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938. Certification.

Without prejudice to the statutory provisions relating to assessment of costs¹, an entitled person² may³ require a solicitor to obtain a remuneration certificate⁴ in respect of a bill which has been delivered where the costs are not more than £50,000⁵. The remuneration certificate must state what sum, in the opinion of the Legal Complaints Service⁶, would be a fair and reasonable charge for the business covered by the bill (whether it is the sum charged or a lesser sum) and, in the absence of assessment, the sum payable in respect of the costs is the sum stated in the remuneration certificate⁷.

Before the solicitor brings proceedings to recover costs against a client on a bill for non-contentious business⁸ he must, except where the bill has been assessed, inform the client in writing of specified matters⁹.

If a solicitor deducts his costs from money held for or on behalf of a client or of an estate in satisfaction of a bill and an entitled person objects in writing to the amount of the bill within the prescribed time¹⁰, the solicitor must immediately inform the entitled person in writing of specified matters¹¹ unless he has already done so¹².

1 Ie the Solicitors Act 1974 ss 70-72. As to the meaning of 'costs' see PARA 936 note 20.

2 As to the meaning of 'entitled person' see PARA 937 note 3.

3 Ie subject to the provisions of the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616 (see the text and notes 4-12; and PARAS 937, 939 et seq): art 4(1).

4 'Remuneration certificate' means a certificate issued pursuant to the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616: see art 2.

5 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 4(1). After an application has been made by a solicitor for a remuneration certificate the client may pay the bill in full without invalidating the application: art 12(1).

A solicitor, when making an application for a remuneration certificate, must deliver to the LCS the complete relevant file and working papers, and any other information or documentation which the LCS may require for the purpose of providing a remuneration certificate: art 15.

6 The Solicitors' (Non-contentious Business) Remuneration Order 1994, SI 1994/2616, refers to the 'Council' (ie the Council of the Law Society). However in practice the body responsible is the Legal Complaints Service (see PARA 632).

7 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 4(2). A client may not require a solicitor to obtain a remuneration certificate:

302 (1) after a bill has been delivered and paid by the client other than by deduction;

303 (2) where a bill has been delivered after the expiry of one month from the date on which the client was informed in writing of the matters specified in art 8 (see PARA 939) or from delivery of the bill if later;

304 (3) after the solicitor and the client have entered into a non-contentious business agreement in accordance with the provisions of the Solicitors Act 1974 s 57 (see PARA 942);

305 (4) after a court has ordered the bill to be assessed;

- 306 (5) if the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(2) applies (see PARA 940): art 9.

An entitled third party may not require a solicitor to obtain a remuneration certificate:

- 307 (a) after the prescribed time (see note 10) has elapsed without any objection being received as to the amount of the costs;
- 308 (b) after expiry of one month from the date on which the entitled party was informed in writing (in compliance with art 7: see the text and note 12) of the matters specified in art 8 (see PARA 939) or from notification of the costs if later;
- 309 (c) after a court has ordered the bill to be assessed: art 10.

As to the meaning of 'client' and 'entitled third party' see PARA 937 note 3. A solicitor and an entitled person may agree in writing to waive the provisions referred to in heads (2)-(3) and (b)-(c) (ie arts 9(b)-(c), 10(b)-(c)): art 12(2).

8 As to the meaning of 'non-contentious business' see PARA 933 note 4.

9 le specified in the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8 (see PARA 939): art 6.

10 'Prescribed time' means:

- 310 (1) in respect of a client, three months after delivery of the relevant bill or a lesser time (not less than one month) specified in writing to the client at the time of delivery of the bill; or
- 311 (2) in respect of an entitled third party, three months after delivery of notification to the entitled third party of the amount of the costs, or a lesser time (not less than one month) specified in writing to the entitled third party at the time of the notification: Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 7(2).

11 le specified in the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8: see PARA 939.

12 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 7(1).

UPDATE

936-940 Non-contentious business remuneration orders ... Requirement to pay a sum towards the costs; refunds by solicitor

SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(ii) Non-contentious Business/939. Information to be given in writing to the entitled person.

939. Information to be given in writing to the entitled person.

When required to do so¹ a solicitor must inform an entitled person² in writing of the following matters:

- 1378 (1) that, where an entitled person has a right to a remuneration certificate³:
532
56. (a) the entitled person may within one month of receiving that information from the solicitor or (if later) of delivery of the bill or notification of the amount of the costs⁴, require the solicitor to obtain a remuneration certificate; and
57. (b) that (unless the solicitor has agreed to do so) the Legal Complaints Service⁵ may waive the requirement to pay a sum towards the costs⁶ if satisfied from the client's written application that exceptional circumstances exist to justify granting a waiver⁷;
- 533
- 1379 (2) that an entitled person's rights in relation to assessment are set out in certain provisions⁸ of the Solicitors Act 1974⁹; and
- 1380 (3) that (where the whole of the bill has not been paid by deduction or otherwise) the solicitor may charge interest¹⁰ on the outstanding amount of the bill¹¹.

1 Ie by the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 6 or 7: see PARA 938.

2 As to the meaning of 'entitled person' see PARA 937 note 3.

3 Ie in accordance with the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 4(1): see PARA 938. As to the meaning of 'remuneration certificate' see PARA 938 note 4.

4 As to the meaning of 'costs' see PARA 936 note 20.

5 The Solicitors' (Non-contentious Business) Remuneration Order 1994, SI 1994/2616, refers to the 'Council' (ie the Council of the Law Society). However in practice the body responsible is the Legal Complaints Service (see PARA 632).

6 Ie the requirement of the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(1): see PARA 940.

7 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8(a). As to what constituted sufficient notice under the Solicitors Remuneration Order 1972, SI 1972/1139 (revoked) see *Clement-Davis v Inter GSA* (1979) 123 Sol Jo 505, CA.

8 Ie the Solicitors Act 1974 ss 70-72: see PARA 967 et seq.

9 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8(b).

10 Ie in accordance with the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 14: see PARA 986.

11 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8(c).

UPDATE

936-940 Non-contentious business remuneration orders ... Requirement to pay a sum towards the costs; refunds by solicitor

SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(ii) Non-contentious Business/940. Requirement to pay a sum towards the costs; refunds by solicitor.

940. Requirement to pay a sum towards the costs; refunds by solicitor.

When a client¹ requires a solicitor to obtain a remuneration certificate², the client must pay to the solicitor 50 per cent of the costs³ together with disbursements already paid by the solicitor and value added tax comprised in the bill subject to certain exceptions⁴.

The Legal Complaints Service (the 'LCS')⁵ is under no obligation to provide a remuneration certificate and the solicitor may take steps to obtain payment of the bill if the client, having been informed of his right to seek a waiver of the requirements to make a payment on account⁶, has not:

- 1381 (1) within one month of receipt of the specified written information⁷ either paid the required sum towards the costs⁸ or applied to the LCS in writing for a waiver of those requirements; or
- 1382 (2) made the required payment⁹ within one month of written notification that he has been refused a waiver by the LCS¹⁰.

If a solicitor has received payment for all or part of his costs and a remuneration certificate is issued for less than the sum already paid, the solicitor must immediately pay to the entitled person¹¹ any refund which may be due (after taking into account any other sums which may properly be payable to the solicitor whether for costs, paid disbursements¹², value added tax or otherwise) unless the solicitor has applied for an order for assessment within one month of receipt by him of the remuneration certificate¹³. Where a solicitor applies for taxation his liability to pay any refund is suspended for so long as the assessment is still pending¹⁴. The obligation of the solicitor to repay costs is without prejudice to any liability of the solicitor to pay interest on the repayment¹⁵.

1 As to the meaning of 'client' see PARA 937 note 3.

2 As to the meaning of 'remuneration certificate' see PARA 938 note 4.

3 As to the meaning of 'costs' see PARA 936 note 20.

4 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(1). The exceptions are that:

312 (1) the client has already paid the amount required under art 11 by deduction from money held or otherwise; or

313 (2) the solicitor or (if the solicitor refuses) the LCS has agreed in writing to waive all or part of this requirement: art 11(1)(a)-(b).

5 The Solicitors' (Non-contentious Business) Remuneration Order 1994, SI 1994/2616 refers to the 'Council' (ie the Council of the Law Society). However in practice the body responsible is the Legal Complaints Service (see PARA 632).

6 Ie under the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(1): see the text and notes 1-4.

7 Ie under the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8: see PARA 939.

8 le in accordance with the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(1).

9 le the required payment in accordance with the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(1).

10 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 11(2).

11 As to the meaning of 'entitled person' see PARA 937 note 3.

12 'Paid disbursements' means disbursements already paid by the solicitor: Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 2.

13 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 13(1).

14 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 13(2).

15 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 13(3).

UPDATE

936-940 Non-contentious business remuneration orders ... Requirement to pay a sum towards the costs; refunds by solicitor

SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(ii) Non-contentious Business/941. Costs of solicitor mortgagee.

941. Costs of solicitor mortgagee.

Where a mortgage¹ is made to a solicitor² either alone or jointly with any other person, he or his firm is entitled to recover from the mortgagor in respect of all business transacted and acts done by him or his firm in negotiating the loan, deducing and investigating the title to the property and preparing and completing the mortgage, such usual costs³ as he or it would have been entitled to receive if the mortgage had been made to a person who was not a solicitor but had retained and employed the solicitor or his firm to transact that business and do those acts⁴. Where a mortgage has been made to, or has become vested by transfer or transmission in, a solicitor, either alone or jointly with any other person, and business is transacted or acts are done by him or his firm in relation to that mortgage or the security created by it or the property charged by it, he or his firm is entitled to recover from the person on whose behalf the business was transacted or the acts were done, and to charge against the security, such usual costs as he or his firm would have been entitled to receive if the mortgage had been made to and had remained vested in a person who was not a solicitor and that person had retained or employed the solicitor or his firm to transact that business and do those acts⁵. Thus a solicitor lending his own money on mortgage may be entitled to charge a fee for negotiating the loan⁶.

1 'Mortgage' includes any charge on any property for securing money or money's worth: Solicitors Act 1974 s 58(3).

2 As to mortgages to solicitors see also PARA 808.

3 As to the meaning of 'costs' see PARA 835 note 6.

4 Solicitors Act 1974 s 58(1).

5 Solicitors Act 1974 s 58(2); *Eyre v Wynn-Mackenzie* [1896] 1 Ch 135, 65 LJCh 194, CA.

6 *Re Norris* [1902] 1 Ch 741.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(ii) Non-contentious Business/942. Form of agreement.

942. Form of agreement.

A solicitor and his client¹ may make an agreement before or after or in the course of the transaction of any non-contentious business² as to the solicitor's remuneration in respect of it³.

The agreement may provide for the remuneration of the solicitor by a gross sum, or by reference to an hourly rate, or by a commission or percentage⁴ or by a salary or otherwise; and, at the option of the parties, it may be inclusive or exclusive of all or any disbursements made by the solicitor in respect of searches, plans, travelling, stamps, fees or other matters⁵.

The agreement must be in writing⁶, signed by the person to be bound by it⁷ or his agent in that behalf⁸.

1 As to the meaning of 'client' see PARA 835 note 6.

2 As to the meaning of 'non-contentious business' see PARA 933 note 4. An agreement as to non-professional work is not affected by the Solicitors Act 1974 and if it is disputed that the agreement relates to professional work the court cannot order an assessment until that question is determined: *Re Inderwick* (1883) 25 Ch D 279, CA; cf *Re Gray, ex p Everitt* (1886) 30 Sol Jo 551, CA.

3 Solicitors Act 1974 s 57(1). This provision applies whether or not there is any solicitor's remuneration order in force under s 56 (see PARA 936): s 57(1).

4 An agreement to take a percentage of a sum to be recovered in non-contentious matters is not champertous but will be strictly regarded by the court which will take into consideration the question whether the client has had independent advice: *Re Hoggart's Settlement* (1912) 56 Sol Jo 415.

5 See the Solicitors Act 1974 s 57(2) (amended by the Courts and Legal Services Act 1990 s 98(1), (2)).

6 Solicitors Act 1974 s 57(3): see *Re Baylis* [1896] 2 Ch 107, CA, where the document referring to an oral agreement was held to be insufficient; *Re A Solicitor* [1956] 1 QB 155, [1955] 3 All ER 305, where an oral agreement was held to be ineffective.

7 See *Re Frape, ex p Perrett* [1893] 2 Ch 284, CA. The position of the signature is unimportant if there is an intention to sign: cf PARA 945 note 6.

8 Solicitors Act 1974 s 57(3); *Re West, King and Adams, ex p Clough* [1892] 2 QB 102 DC.

UPDATE

942-948 Form of agreement ... Enforcement of agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

942 Form of agreement

TEXT AND NOTE 5--Referece to stamps is now to taxes: Solicitors Act 1974 s 57(2) (amended by Legal Services Act 2007 Sch 16 para 55(a)).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(ii) Non-contentious Business/943. Enforcement of non-contentious business agreement.

943. Enforcement of non-contentious business agreement.

Subject to certain exceptions¹ a non-contentious business² agreement may be sued and recovered on or set aside in the same manner and on similar grounds as an agreement not relating to the remuneration of a solicitor³.

If on any assessment of costs⁴ the agreement is relied on by the solicitor and objected to by the client⁵ as unfair or unreasonable, the costs officer may inquire into the facts and certify them to the court, and if from that certificate it appears just to the court that the agreement should be set aside or the amount payable under it reduced, the court may so order and give such consequential directions as it thinks fit⁶.

Where an agreement provides for a solicitor's remuneration to be by reference to an hourly rate and on assessment the client objects to the amount of the costs while not alleging that the agreement is unfair or unreasonable, the costs officer may inquire into the number of hours worked by the solicitor and whether that number was excessive⁷.

The amount payable under an agreement cannot be included in a cash account on the assessment of other bills under an order for assessment⁸.

1 le subject to the Solicitors Act 1974 s 57(5), (7) (s 57(7) added by the Courts and Legal Services Act 1990 s 98(1), (4)): see the text and notes 4-8.

2 As to the meaning of 'non-contentious business' see PARA 933 note 4.

3 Solicitors Act 1974 s 57(4) (amended by the Courts and Legal Services Act 1990 s 98(1), (3)).

4 As to assessment of costs see PARA 967 et seq. As to the meaning of 'costs' see PARA 835 note 6.

5 As to the meaning of 'client' see PARA 835 note 6.

6 Solicitors Act 1974 s 57(5); *Re Frape, ex p Perrett* [1893] 2 Ch 284, CA. Some ground for assessment should be shown: see *Re Palmer* (1890) 45 ChD 291, CA; and see *Rutter v Sheridan-Young* [1958] 2 All ER 13, [1958] 1 WLR 444, CA; *Re Duncan* (1907) 51 Sol Jo 485. The Solicitors Act 1974 s 57(5) is prospectively amended by the Legal Services Act 2007 Sch 16 para 55(b)(ii) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

7 Solicitors Act 1974 s 57(6), (7) (added by the Courts and Legal Services Act 1990 s 98(1), (4)). The Solicitors Act 1974 s 57(7) is prospectively amended by the Legal Services Act 2007 Sch 16 para 55(c)(ii) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

8 *Re Templeman and Cox* (1909) 101 LT 144, CA.

UPDATE

942-948 Form of agreement ... Enforcement of agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

943 Enforcement of non-contentious business agreement

NOTES 6, 7--Amendments made by Legal Services Act 2007 Sch 16 para 55(b)(ii), (c)(ii) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/944. Civil costs.

(iii) Contentious Costs; Basis of Assessment

944. Civil costs.

Subject to rules of court, upon every assessment of costs¹ with respect to any contentious business the costs officer may have regard, in determining the remuneration of the solicitor, to the skill, labour and responsibility involved in the business done by him². Similarly, in determining the remuneration of a recognised body³ the costs officer must have regard to the skill, labour and responsibility which the business involved on the part of any solicitor being an officer or employee of the body⁴.

1 The Solicitors Act 1974 s 66(b) and the Administration of Justice Act 1985 Sch 2 para 26 are prospectively amended by the Legal Services Act 2007 Sch 16 paras 62(a)-(c), 113(a), (b) which reflect the replacement of taxation of costs with assessment of costs.

2 Solicitors Act 1974 s 66(b). As from a day to be appointed s 66(b) is amended by the Legal Services Act 2007 Sch 16 para 62(e) and also applies to the skill, labour and responsibility involved in the business done by any employee of the solicitor who is an authorised person. For these purposes 'authorised person' means a person who is an authorised person in relation to an activity which is a reserved legal activity: Solicitors Act 1974 s 56(5A) (applied by s 66(b)). At the date at which this volume states the law no such day had been appointed.

3 As to the meaning of 'recognised body' see PARA 687 note 3.

4 See the Administration of Justice Act 1985 Sch 2 para 26(b). As from a day to be appointed Sch 2 para 26(b) is renumbered Sch 2 para 26(1)(b) and is amended by the Legal Services Act 2007 Sch 16 para 113(b)(iv) to instead apply to the skill, labour and responsibility on the part of an authorised person who is a manager or employee of the body. 'Authorised person' means an authorised person in relation to an activity which is a reserved legal activity: Administration of Justice Act 1985 Sch 2 para 26(2) (prospectively added by the Legal Services Act 2007 Sch 16 para 113(c)). As to the meaning of 'reserved legal activity' see the Legal Services Act 2007; and PARA 512. At the date at which this volume states the law no such day had been appointed.

UPDATE

942-948 Form of agreement ... Enforcement of agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

944 Civil costs

NOTE 1--Amendments made by Legal Services Act 2007 Sch 16 paras 62(a)-(c), 113(a), (b) in force 1 January 2010: SI 2009/3250.

NOTES 2, 4--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/945. Form of agreement.

945. Form of agreement.

A solicitor is entitled by statute¹ to make a written agreement² (called a 'contentious business agreement')³ with his client, as to his remuneration in respect of any contentious business⁴ done or to be done by him, providing that he is remunerated by a gross sum, or by reference to an hourly rate, or by a salary, or otherwise, and whether at a higher or lower rate than that at which he would otherwise have been entitled to be remunerated⁵.

To bind the client the agreement must be signed⁶ by him⁷. It may be contained in a letter⁸ or any other document⁹ provided that all the terms of the agreement which relate to the remuneration appear in it and are sufficiently specific¹⁰ and the intention of the parties is clearly shown¹¹.

1 Ie under the Solicitors Act 1974 s 59: see the text and notes 2-5.

2 Such an agreement is valid notwithstanding the client's subsequent bankruptcy and money paid to the solicitor without notice of an act of bankruptcy may be retained even if work is not done until afterwards: *Re Charlwood, ex p Masters* [1894] 1 QB 643, DC. See also *Re Sinclair, ex p Payne* (1885) 15 QBD 616; and contrast *Re Pollitt, ex p Minor* [1893] 1 QB 175 (on appeal [1893] 1 QB 455, CA); *Re Betyts and Craig, ex p Trustee* (1894) 70 LT 561. The provisions of the Solicitors Act 1974 ss 59-63 (see PARA 946 et seq) do not give validity to:

314 (1) any purchase by a solicitor of the interest or any part of the interest of his client in any action, suit or other contentious proceeding; or

315 (2) any agreement by which a solicitor retained or employed to prosecute any action, suit or other contentious proceeding stipulates for payment only in the event of success in that action, suit or proceeding; or

316 (3) any disposition, contract, settlement, conveyance, delivery, dealing or transfer which under the law relating to bankruptcy is invalid against a trustee or creditor in any bankruptcy or composition: s 59(2).

A trustee in bankruptcy is entitled to go behind an agreement and ascertain that a debt for which a proof is advanced is a real debt whether or not it is for the solicitor's costs: *Re Van Laun, ex p Chatterton* [1907] 2 KB 23, CA. As to the meaning of 'client' see PARA 835 note 6.

3 Solicitors Act 1974 ss 59(1), 87(1) (s 59(1) amended by the Courts and Legal Services Act 1990 s 98(1), (5)). As to the meaning of 'contentious business' see PARA 933 note 2.

4 Ie including conveyancing business undertaken in the course of proceedings: *Re Simpkin Marshall Ltd* [1959] Ch 229, [1958] 3 All ER 611.

5 Solicitors Act 1974 s 59(1) (as amended: see note 3). Where certain secret profits were not the subject of an agreement between the solicitor and the client but were within the contemplation of the parties when their oral agreement was made, the solicitor was held to be entitled to retain the profits: *Electrical Trades Union v Tarlo* [1964] Ch 720, [1964] 2 All ER 1.

6 The position of the signature is unimportant if there is an intention to sign: *Evans v Hoare* [1892] 1 QB 593; and see *Re Frape, ex p Perrett* [1893] 2 Ch 284 at 291 (on appeal [1893] 2 Ch 293, CA); but where a solicitor sent his client a letter containing terms on which the client did not comment it was held that the client had not signed the agreement: *Chamberlain v Boodle and King (a firm)* [1982] 3 All ER 188, [1982] 1 WLR 1443, CA.

7 *Re Thompson, ex p Baylis* [1894] 1 QB 462, DC (disapproving on this point *Re Lewis, ex p Munro* (1876) 1 QBD 724, DC); *Bake v French (No 2)* [1907] 2 Ch 215. Cf *Re Jones* [1896] 1 Ch 222, CA, where no objection was raised on this ground. See to the contrary *Re Raven, ex p Pitt* (1881) 45 LT 742.

8 See *Pontifex v Farnham* (1892) 62 LJQB 344; *McLean v Carlish* (1917) 61 Sol Jo 399, HL; and see *Re Palmer* (1890) 45 ChD 291, CA.

9 *Re Thompson, ex p Baylis* [1894] 1 QB 462, DC, where the agreement was incorporated in a form of receipt.

10 See *Chamberlain v Boodle and King (a firm)* [1982] 3 All ER 188, [1982] 1 WLR 1443, where 'from £60 to £80 an hour' and 'from £30 to £45 an hour' were held to be too vague. See also *Re Frape, ex p Perrett* [1893] 2 Ch 284, CA; *Re Baylis* [1896] 2 Ch 107.

11 *Pontifex v Farnham* (1892) 5 R 149; *Chamberlain v Boodle and King (a firm)* [1982] 3 All ER 188, [1982] 1 WLR 1443.

UPDATE

942-948 Form of agreement ... Enforcement of agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/946. Content of contentious business agreements.

946. Content of contentious business agreements.

A provision in a contentious business agreement¹ that the solicitor will not be liable for his negligence, or that of any employee of his, is void if the client is a natural person who, in entering that agreement, is acting for purposes which are outside his trade, business or profession².

The agreement may extend to the whole or a part of the costs³ of the business⁴. A provision in a contentious business agreement that the solicitor is relieved from any responsibility to which he would be subject as a solicitor is void⁵.

1 As to the meaning of 'contentious business agreement' see PARA 945.

2 Solicitors Act 1974 s 60(5) (s 60(5), (6) substituted by the Legal Services Act 2007 Sch 16 para 56(c)). Similarly, the following applies in relation to a contentious agreement made between a recognised body and a client: Administration of Justice Act 1985 Sch 2 para 24(1) (Sch 2 para 24 substituted by the Legal Services Act 2007 Sch 16 para 111). A provision in the agreement that the body is not liable for the negligence of any of its managers or employees is void if the client is a natural person who, in entering that agreement, is acting for purposes which are outside his trade, business or profession: Sch 2 para 24(2) (as so substituted). A provision in the agreement that the body is relieved from any responsibility to which it would otherwise be subject in the course of carrying on its business as a recognised body is void: Sch 2 para 24(3) (as so substituted). A provision in the agreement that any manager of the body is relieved from any responsibility to which the manager would otherwise be subject in the course of the carrying on by the body of its business as a recognised body is void: Sch 2 para 24(4) (as so substituted). See also *Rees v Williams* (1875) LR 10 Exch 200; *Cheese v Keen* [1908] 1 Ch 245.

As to the meaning of 'recognised body' see PARA 687 note 3. As to a solicitor's liability for negligence see further PARAS 876, 820-823.

3 As to the meaning of 'costs' see PARA 835 note 6.

4 See *Mackendrick v National Union of Dock Labourers* (1911) 48 SCLR 17, Ct of Sess where the agreement was held to cover charges, disbursements and the account of the Edinburgh agent. As to legal agents see further PARA 1022 et seq.

5 Solicitors Act 1974 s 60(4) (as substituted: see note 2).

UPDATE

942-948 Form of agreement ... Enforcement of agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/947. Effect of contentious business agreements.

947. Effect of contentious business agreements.

A contentious business agreement¹ does not affect the amount of, or any rights or remedies for the recovery of, any costs² payable by the client³ to, or to the client by, any person other than the solicitor, and that person may, unless it is otherwise agreed, require the costs to be assessed according to the rules for their assessment for the time being in force⁴. A client is not entitled to recover from any other person under an order for the payment of any costs to which the agreement relates more than the amount payable by him to his solicitor in respect of those costs under the agreement⁵.

Subject to the statutory provisions⁶ the costs of the solicitor in any case where a contentious business agreement has been made will not be subject to assessment or (except in the case of an agreement which provides for remuneration by reference to an hourly rate) to the statutory requirements⁷ for signature and delivery of a bill before any action can be commenced⁸.

1 As to the meaning of 'contentious business agreement' see PARA 945.

2 As to the meaning of 'costs' see PARA 835 note 6.

3 As to the meaning of 'client' see PARA 835 note 6.

4 Solicitors Act 1974 s 60(2); and see *Henderson v Merthyr Tydfil UDC* [1900] 1 QB 434. The Solicitors Act 1974 s 60(2) is subject to s 60(3) (see the text and note 5): s 60(2). As to assessment see PARA 967 et seq. The Solicitors Act 1974 s 60(2) is prospectively amended by the Legal Services Act 2007 Sch 16 para 56(b) which reflects the replacement of taxation of costs with assessment of costs.

5 Solicitors Act 1974 s 60(3). This gives statutory force to the common law doctrine that costs are given to a successful party by way of indemnity only. See also *Gundry v Sainsbury* [1910] 1 KB 99 at 465, CA; *British Waterways Board v Norman* (1993) 26 HLR 232, DC; *Baillie v Nevile, Preston v Nevile* (1920) 149 LT Jo 300; *Adams v London Improved Motor Coach Builders Ltd* [1921] 1 KB 495, CA; *Cornish v Lynch* (1910) 3 BWCC 343, CA; and *R v Miller and Glennie* [1983] 3 All ER 186, [1983] 1 WLR 1056.

6 Ie the Solicitors Act 1974 ss 60-63 (see PARAS 946, 948 et seq).

7 Ie the requirements of the Solicitors Act 1974 s 69: see PARA 956 et seq.

8 Solicitors Act 1974 s 60(1) (amended by the Courts and Legal Services Act 1990 s 98(1), (6)). The Solicitors Act 1974 s 60(1) is prospectively amended by the Legal Services Act 2007 Sch 16 para 56(a) which reflects the replacement of taxation of costs with assessment of costs.

UPDATE

942-948 Form of agreement ... Enforcement of agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

947 Effect of contentious business agreements

NOTES 4, 8--Amendments made by Legal Services Act 2007 Sch 16 para 56(a), (b) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/948. Enforcement of agreement.

948. Enforcement of agreement.

No action may be brought¹ on any contentious business agreement². However on an application to the court³ by any person who:

- 1383 (1) is a party to the agreement or a representative of such a party⁴; or
- 1384 (2) is or is alleged to be liable to pay or is or claims to be entitled to be paid the costs⁵ due or alleged to be due in respect of the business to which the agreement relates⁶,

the court may enforce or set aside the agreement and determine every question as to its validity and effect⁷.

If on any such application the court is of the opinion that the agreement is in all respects fair and reasonable it may enforce it⁸. If it is of the opinion that the agreement is in any respect unfair or unreasonable it may set it aside and order the costs covered by it to be assessed as if it had never been made⁹. In any case it may make such order as to the costs of the application as it thinks fit¹⁰.

If the business covered by the agreement¹¹ is business done or to be done in any action, a client¹² may apply to the costs officer of the court for the agreement to be examined¹³. The costs officer must examine the agreement and must either allow it or, if he is of the opinion that the agreement is unfair or unreasonable, require the opinion of the court to be taken on it¹⁴ and the court may allow the agreement or reduce the amount payable under it or set it aside and order the costs covered by it to be assessed as if it had never been made¹⁵.

The court may order a bill to be delivered so as to have material before it on which to determine whether the agreement is fair and reasonable¹⁶.

Where a contentious business agreement provides for the remuneration of the solicitor to be by reference to an hourly rate, if on the assessment of any costs the agreement is relied on by the solicitor and the client objects to the amount of the costs (but does not allege that the agreement is unfair or unreasonable), the costs officer may inquire into the number of hours worked by the solicitor and whether that number was excessive¹⁷.

1 The solicitor may, however, sue the client for failure to employ him under the agreement: *Rees v Williams* (1875) LR 10 Exch 200.

2 Solicitors Act 1974 s 61(1). As to the meaning of 'contentious business agreement' see PARA 945.

3 In the Solicitors Act 1974 ss 61-63 'court' means:

317 (1) in relation to an agreement under which any business has been done in any court (including a county court) having jurisdiction to enforce and set aside agreements, any such court in which any of that business has been done (s 61(6)(a));

318 (2) in relation to an agreement under which no business has been done in any such court and under which more than £50 is payable, the High Court (s 61(6)(b)); and

319 (3) in relation to an agreement under which no business has been done in any such court and under which not more than £50 is payable, any county court which would, but for the provisions

of s 61(1) prohibiting the bringing of an action on the agreement, have had jurisdiction in any action on it (s 61(6)(c)).

4 Solicitors Act 1974 s 61(1)(a).

5 As to the meaning of 'costs' see PARA 835 note 6.

6 Solicitors Act 1974 s 61(1)(b).

7 Solicitors Act 1974 s 61(1).

8 Solicitors Act 1974 s 61(2)(a).

9 Solicitors Act 1974 s 61(2)(b).

10 Solicitors Act 1974 s 61(2)(c).

11 Ie excluding agreements to which the Solicitors Act 1974 s 62 applies (agreements by certain representatives: see PARA 949): s 61(3).

12 As to the meaning of 'client' see PARA 835 note 6. The client must be a party to the agreement: Solicitors Act 1974 s 61(3).

13 Solicitors Act 1974 s 61(3). The Solicitors Act 1974 s 61(3) is prospectively amended by the Legal Services Act 2007 Sch 16 para 57(b) which reflects the replacement of a taxation officer with a costs officer.

14 The court's opinion cannot be taken before the amount agreed on is payable: *Re Attorneys and Solicitors Act 1870* [1875] 1 ChD 573.

15 Solicitors Act 1974 s 61(4). The Solicitors Act 1974 s 61(4) is prospectively amended by the Legal Services Act 2007 Sch 16 para 57(c) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

16 *Ray v Newton* [1913] 1 KB 249, CA.

17 Solicitors Act 1974 s 61(4A), (4B) (added by the Courts and Legal Services Act 1990 s 98(1), (7)). The Solicitors Act 1974 s 61(4B) is prospectively amended by the Legal Services Act 2007 Sch 16 para 57(d) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

UPDATE

942-948 Form of agreement ... Enforcement of agreement

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

948 Enforcement of agreement

NOTE 9--Solicitors Act 1974 s 61(2)(b) as amended by Legal Services Act 2007 Sch 16 para 57(a).

NOTES 13, 15, 17--Amendments made by Legal Services Act 2007 Sch 16 para 57(b)-(d) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/949. Contentious business agreements by certain representatives.

949. Contentious business agreements by certain representatives.

Where the client¹ who makes a contentious business agreement² makes it as a representative³ of the person whose property will be chargeable with the whole or part of the amount payable under the agreement, the agreement must be laid before a costs officer of the court⁴ before payment⁵.

The costs officer must examine the agreement and may either allow it, or, if he is of the opinion that it is unfair or unreasonable, require the opinion of the court to be taken on it; and the court may allow the agreement or reduce the amount payable under it or set it aside and order the costs⁶ covered by it to be assessed as if it had never been made⁷.

A client who makes a contentious business agreement and pays the whole or any part of the amount payable under it without it being allowed by the officer or by the court is liable at any time to account to the person whose property is so charged with the whole or any part of the amount so paid or the sum so charged; and the solicitor who accepts the payment may be ordered by the court to refund the amount received by him⁸.

1 As to the meaning of 'client' see PARA 835 note 6.

2 As to the meaning of 'contentious business agreement' see PARA 945.

3 A client makes a contentious business agreement as the representative of another person if he makes it as his guardian, as a trustee for him under a deed or will, as a deputy for him appointed by the Court of Protection with powers in relation to his property and affairs or as another person authorised to act on his behalf: see the Solicitors Act 1974 s 62(4) (amended by the Mental Capacity Act 2005 Sch 6 para 22(3)).

4 As to the meaning of 'court' see PARA 948 note 3.

5 Solicitors Act 1974 s 62(1). The Solicitors Act 1974 s 62(1) is prospectively amended by the Legal Services Act 2007 Sch 16 para 58(a) which reflects the replacement of a taxation officer with a costs officer.

6 As to the meaning of 'costs' see PARA 835 note 6.

7 Solicitors Act 1974 s 62(2). The Solicitors Act 1974 s 62(2) is prospectively amended by the Legal Services Act 2007 Sch 16 para 58(b) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

8 Solicitors Act 1974 s 62(3).

UPDATE

949 Contentious business agreements by certain representatives

NOTES 5, 7--Amendments made by Legal Services Act 2007 Sch 16 para 58 in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/950. The effect of death, incapability or change of solicitor.

950. The effect of death, incapability or change of solicitor.

If the solicitor dies or becomes incapable of acting after doing some of the business under a contentious business agreement¹ but before he has wholly performed it², any party to, or the representative of any party to, the agreement may apply³ to the court⁴ and the court has the same jurisdiction as to enforcing or setting aside the agreement⁵ as it would have had if the solicitor had not died or become incapable of acting⁶. Notwithstanding that it thinks the agreement fair and reasonable, the court may direct the costs officer to ascertain the value of the work done under the agreement having regard, upon assessment, to the terms of the agreement⁷.

The same principle applies when the client⁸ changes his solicitor⁹ before the completion of the work¹⁰, but in this case, if an order is made for the assessment of the amount due to the solicitor in respect of the business done under the agreement, the court must direct the costs officer to have regard to the circumstances under which the change of solicitor has taken place and unless the costs officer is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of the solicitor¹¹ affording the client reasonable ground for changing his solicitor, he must not allow to the solicitor the full amount of the remuneration agreed to be paid to him¹².

1 As to the meaning of 'contentious business agreement' see PARA 945.

2 Solicitors Act 1974 s 63(1)(a).

3 As to applications to the court see PARA 948.

4 As to the meaning of 'court' see PARA 948 note 3.

5 I.e. that portion of the agreement which relates to the remuneration: see *Rees v Williams* (1875) LR 10 Exch 200.

6 Solicitors Act 1974 s 63(1).

7 See the Solicitors Act 1974 s 63(2)(a). Payment of the amount found due by the costs officer may be enforced in the same manner as if the agreement had been completely performed: s 63(2)(b). The Solicitors Act 1974 s 63(2) is prospectively amended by the Legal Services Act 2007 Sch 16 para 59(b) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

8 As to the meaning of 'client' see PARA 835 note 6.

9 As to change of solicitor see PARA 782. The client is entitled to change his solicitor notwithstanding the agreement: Solicitors Act 1974 s 63(1)(b).

10 Solicitors Act 1974 s 63(1)(b).

11 As from a day to be appointed the Solicitors Act 1974 s 63(3) is amended by the Legal Services Act 2007 Sch 16 para 59 to include where there has been default, negligence, improper delay or other conduct on the part of the solicitor's employees. At the date at which this volume states the law no such day had been appointed.

12 Solicitors Act 1974 s 63(3). The Solicitors Act 1974 s 63(3) is prospectively amended by the Legal Services Act 2007 Sch 16 para 59(b) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

UPDATE

950 The effect of death, incapability or change of solicitor

NOTES 7, 12--Amendments made by Legal Services Act 2007 Sch 16 para 59(b) in force 1 January 2010: SI 2009/3250.

NOTE 11--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/951. Effect on contentious business agreement of supervening incapacity of recognised body to act for client.

951. Effect on contentious business agreement of supervening incapacity of recognised body to act for client.

If, after some business has been done under a contentious business agreement¹ made between a recognised body² and a client³ but before the body has wholly performed it, the body ceases to be capable of wholly performing it by reason of one of the following events, namely:

- 1385 (1) the body ceases (for any reason) to be a recognised body⁴;
- 1386 (2) a relevant insolvency event occurs in relation to the body⁵; or
- 1387 (3) the client terminates the retainer or employment of the body in favour of another recognised body or a solicitor⁶,

then the following provisions apply⁷. Any party to, or the representative of any party to, the agreement may apply to the court⁸, and the court has the same jurisdiction as to enforcing the agreement so far as it has been performed, or setting it aside, as the court would have had if the recognised body were still capable of wholly performing it⁹.

Notwithstanding that it is of the opinion that the agreement is in all respects fair and reasonable, the court may order the amount due in respect of business under the agreement to be ascertained by assessment, and in that case:

- 1388 (a) the costs officer, in ascertaining that amount, must have regard so far as may be to the terms of the agreement; and
- 1389 (b) payment of the amount found by him to be due may be enforced in the same manner as if the agreement had been wholly performed¹⁰.

1 As to the meaning of 'contentious business agreement' see PARA 945 (definition applied by the Administration of Justice Act 1985 s 9(6), Sch 2 para 1(4)).

2 As to the meaning of 'recognised body' see PARA 687 note 3.

3 As to the meaning of 'client' see PARA 835 note 6 (definition applied by the Administration of Justice Act 1985 Sch 2 para 1(4)).

4 Administration of Justice Act 1985 Sch 2 para 25(1)(a). As to expiry and revocation of recognition see PARAS 697-698.

5 Administration of Justice Act 1985 Sch 2 para 25(1)(b) (substituted by the Legal Services Act 2007 Sch 16 para 112(a)). For this purpose a relevant insolvency event occurs in relation to a recognised body if:

320 (1) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under the Insolvency Act 1986 s 89 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 941) (Administration of Justice Act 1985 Sch 2 para 25(4)(a) (added by the Legal Services Act 2007 Sch 2 para 112(d)));

321 (2) the body enters administration within the meaning of the Insolvency Act 1986 Sch B1 para 1(2)(b) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 212) (Administration of Justice Act 1985 Sch 2 para 25(4)(b) (as so added));

322 (3) an administrative receiver within the meaning of the Insolvency Act 1986 s 251 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 8) is appointed (Administration of Justice Act 1985 Sch 2 para 25(4)(c) (as so added));

323 (4) a meeting of creditors is held in relation to the body under the Insolvency Act 1985 s 95 (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 942) (Administration of Justice Act 1985 Sch 2 para 25(4)(d)) (as so added));

324 (5) an order for the winding up of the body is made (Administration of Justice Act 1985 Sch 2 para 25(4)(e) (as so added)).

6 Administration of Justice Act 1985 Sch 2 para 25(1)(c). The client is entitled to terminate the retainer or employment of the recognised body notwithstanding the agreement: Administration of Justice Act 1985 Sch 2 para 25(1)(c).

7 Administration of Justice Act 1985 Sch 2 para 25(1)(a)-(c).

8 As to the meaning of 'court' see PARA 948 note 3 (definition applied by virtue of the Administration of Justice Act 1985 Sch 2 para 1(5)).

9 Administration of Justice Act 1985 Sch 2 para 25(1).

10 Administration of Justice Act 1985 Sch 2 para 25(2). If, in such a case as is mentioned in Sch 2 para 25(1) (c) (see head (3) in the text) an order is made for the assessment of the amount due to the recognised body in respect of the business done under the agreement, the court must direct the costs officer to have regard to the circumstances under which the termination of the body's retainer or employment has taken place, and the taxing officer, unless he is of the opinion that there has been no default, negligence, improper delay or other conduct on the part of any manager or employee of the body affording the client reasonable ground for terminating its retainer or employment, must not allow the body the full amount of the remuneration agreed to be paid to it: Sch 2 para 25(3) (amended by the Legal Services Act 2007 Sch 16 para 112(c)). The Administration of Justice Act 1985 Sch 2 para 25(2), (3) is prospectively amended by the Legal Services Act 2007 Sch 16 para 112(b) which reflects the replacement of taxation of costs with assessment of costs and a taxation officer with a costs officer.

UPDATE

951 Effect on contentious business agreement of supervening incapacity of recognised body to act for client

NOTE 10--Amendment made by Legal Services Act 2007 Sch 16 para 112(b) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iii) Contentious Costs; Basis of Assessment/952. Re-opening the agreement.

952. Re-opening the agreement.

Where the amount agreed under any contentious business agreement¹ is paid² by or on behalf of the client³ or by any person entitled to do so, the person making the payment may at any time within 12 months from the date of payment or within such further time as appears to the court⁴ to be reasonable, apply to the court and, if it appears to the court that the special circumstances of the case⁵ require the agreement to be re-opened, the court may re-open it on such terms as may be just and may order the costs⁶ covered by the agreement to be assessed and the whole or any part of the amount received by the solicitor to be repaid by him⁷.

1 As to the meaning of 'contentious business agreement' see PARA 945.

2 Payment requires the consensus of the minds of the solicitor and the payer: *Re Jackson* [1915] 1 KB 371 at 381, 383; and see generally PARA 979.

3 As to the meaning of 'client' see PARA 835 note 6.

4 As to the meaning of 'court' see PARA 948 note 3.

5 As to what constitutes special circumstances see PARA 975.

6 As to the meaning of 'costs' see PARA 835 note 6.

7 Solicitors Act 1974 s 61(5). The Solicitors Act 1964 s 61(5) is prospectively amended by the Legal Services Act 2007 Sch 16 para 57(e) which reflects the replacement of taxation of costs with assessment of costs.

UPDATE

952 Re-opening the agreement

NOTE 7--Amendment made by Legal Services Act 2007 Sch 16 para 57(e) in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iv) Conditional Fee Agreements and Litigation Funding Agreements/953. Conditional fee agreements.

(iv) Conditional Fee Agreements and Litigation Funding Agreements

953. Conditional fee agreements.

A conditional fee agreement is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances¹. A conditional fee agreement which satisfies all of the following conditions applicable to it is not unenforceable by reason only of its being a conditional fee agreement; but any other conditional fee agreement is unenforceable².

The following conditions are applicable to every conditional fee agreement:

- 1390 (1) it must be in writing;
- 1391 (2) it must not relate to proceedings³ which cannot be the subject of an enforceable conditional fee agreement; and
- 1392 (3) it must comply with such requirements (if any) as may be prescribed by the Lord Chancellor⁴.

The following conditions also apply where a conditional fee agreement provides for a success fee⁵:

- 1393 (a) it must relate to proceedings of a description specified by order made by the Lord Chancellor;
- 1394 (b) it must state the percentage by which the amount of the fees which would be payable if it were not a conditional fee agreement is to be increased; and
- 1395 (c) that percentage must not exceed the percentage specified in relation to the description of proceedings to which the agreement relates by order made by the Lord Chancellor⁶.

A solicitor acting under a conditional fee agreement must explain certain information⁷ both at the outset and, when appropriate, as the matter progresses⁸.

The court will not assess any additional liability⁹ in relation to conditional fee arrangements until the conclusion of the proceedings, or the part of the proceedings, to which the funding arrangement relates¹⁰. Once such proceedings have concluded the court may make a summary assessment¹¹ of all the costs, including any additional liability, an order for detailed assessment¹² of the additional liability but a summary assessment of the other costs, or an order for detailed assessment¹³.

1 Courts and Legal Services Act 1990 s 58(2)(a) (substituted by the Access to Justice Act 1999 s 27(1)).

2 Courts and Legal Services Act 1990 s 58(1) (as substituted: see note 1). Proceedings which cannot be the subject of an enforceable conditional fee agreement are:

325 (1) criminal proceedings, apart from proceedings under the Environmental Protection Act 1990; and

- 326 (2) proceedings under any one or more of the Matrimonial Causes Act 1973, the Adoption and Children Act 2002, the Domestic Proceedings and Magistrates' Courts Act 1978, the Matrimonial and Family Proceedings Act 1984 Pt III, the Children Act 1989 Pts I, II and IV, the Family Law Act 1996 Pt 4 and Pt 4A, the Civil Partnership Act 2004 Pt 2 Chapter 2 and Schs 5-7 and the inherent jurisdiction in the High Court in relation to children (Courts and Legal Services Act 1990 s 58A(1), (2) (added by the Access to Justice Act 1999 s 27(1) and amended by the Adoption and Children Act 2002 Sch 3 para 80, the Civil Partnership Act 2004 Sch 27 para 138 and the Forced Marriage (Civil Protection) Act 2007 Sch 2 para 2)).

See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1830 et seq.

3 'Proceedings' includes any sort of proceedings for resolving disputes (and not just proceedings in court) whether commenced or contemplated: Courts and Legal Services Act 1990 s 58A(4) (as added: see note 2).

4 Courts and Legal Services Act 1990 s 58(3) (as substituted (see note 1); amended by SI 2005/3429). If a conditional fee agreement is an agreement to which the Solicitors Act 1974 s 57 (see PARAS 942-943) (non-contentious business agreements between solicitor and client) applies, the Courts and Legal Services Act 1990 s 58(1) does not make it unenforceable: s 58(5) (as so substituted). The requirements which the Lord Chancellor may prescribe under head (c) in the text include requirements for the person providing advocacy or litigation services to have provided prescribed information before the agreement is made and may be different for different descriptions of conditional fee agreements (and, in particular, may be different for those which provide for a success fee and those which do not): s 58A(3) (as added (see note 2) and amended by SI 2005/3429)).

5 A conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased in specified circumstances above the amount which would be payable if it were not payable only in specified circumstances: Courts and Legal Services Act 1990 s 58(2)(b) (as substituted: see note 1). A costs order made in proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment under a conditional fee agreement which provides for a success fee: s 58A(6) (as added: see note 2). Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee: s 58A(7) (as so added)). As to claims for a success fee see the CPR 44.16, 45.11; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1836. See also *Gloucestershire County Council v Evans* [2008] EWCA Civ 21, [2008] 1 WLR 1883.

6 Courts and Legal Services Act 1990 s 58(4) (as substituted (see note 1); amended by SI 2005/3429). Before making an order under the Courts and Legal Services Act 1990 s 58(4) the Lord Chancellor must consult certain persons: see s 58A(5) (as added (see note 2) and amended by SI 2005/3429). All proceedings which under the Courts and Legal Services Act 1990 s 58 can be the subject of an enforceable conditional fee agreement, except proceedings under the Environmental Protection Act 1990 s 82 (see **NUISANCE** vol 78 (2010) PARAS 210-212, 226), are proceedings specified for the purposes of head (a) in the text: Conditional Fee Agreements Order 2000, SI 2000/823, art 3. In relation to such proceedings the percentage specified for the purposes of head (c) in the text is 100%: art 4.

7 The solicitor must explain the following information:

327 (1) the circumstances in which the client may be liable for the solicitor's costs and whether payment will be sought from the client (Solicitors' Code of Conduct 2007 r 2.03(2)(a));

328 (2) any assessment that will apply if seeking payment from the client (r 2.03(2)(b)); and

329 (3) where applicable, that payment is going to a charity under a fee sharing agreement (r 2.03(2)(c)).

8 See the Solicitors' Code of Conduct 2007 r 2.03(2).

9 'Additional liability' means the percentage increase, the insurance premium, or the additional amount in respect of provision made by a membership organisation as the case may be: CPR 43.2(1)(o). There are limits on what may be recovered as an additional liability: see CPR 44.3B, 45.16; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1835. See also CPR 44.18, 44.19, 45.21, 45.22, 45.24, 45.26; and **CIVIL PROCEDURE**.

10 See CPR 43.2, 44.3A(1); and **CIVIL PROCEDURE**.

11 As to the meaning of 'summary assessment' see PARA 967.

12 As to the meaning of 'detailed assessment' see PARA 967.

13 CPR 44.3A(2).

UPDATE

953 Conditional fee agreements

TEXT AND NOTES--See also Courts and Legal Services Act 1990 s 58AA (added by Coroners and Justice Act 2009 s 154(2)) which provides for the regulation of damages-based agreements in respect of claims relating to employment matters.

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 5--See also *Birmingham City Council v Forde* [2009] EWHC 12 (QB), [2010] 1 All ER 802.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(iv) Conditional Fee Agreements and Litigation Funding Agreements/954. Litigation funding agreements.

954. Litigation funding agreements.

As from a day to be appointed the following provisions have effect¹. A litigation funding agreement is an agreement under which a person (the 'funder') agrees to fund (in whole or in part) the provision of advocacy or litigation services (by someone other than the funder) to another person (the 'litigant') and the litigant agrees to pay a sum to the funder in specified circumstances². A litigation funding agreement which satisfies all of the relevant conditions³ is not unenforceable by reason only of its being a litigation funding agreement⁴.

The following conditions are applicable to a litigation funding agreement:

- 1396 (1) the funder must be a person, or person of a description, prescribed⁵ by the Lord Chancellor;
- 1397 (2) the agreement must be in writing;
- 1398 (3) the agreement must not relate to proceedings which cannot be the subject of an enforceable conditional fee agreement⁶ or to proceedings of any such description as may be prescribed by the Lord Chancellor;
- 1399 (4) the agreement must comply with such requirements (if any) as may be so prescribed⁷;
- 1400 (5) the sum to be paid by the litigant must consist of any costs payable to him in respect of the proceedings to which the agreement relates together with an amount calculated by reference to the funder's anticipated expenditure in funding the provision of the services; and
- 1401 (6) that amount must not exceed such percentage of that anticipated expenditure as may be prescribed by the Lord Chancellor in relation to proceedings of the description to which the agreement relates⁸.

Rules of court may make provision with respect to the assessment of any costs which include fees payable under a litigation funding agreement⁹.

1 The Courts and Legal Services Act 1990 s 58B is added by the Access to Justice Act 1999 s 28 as from a day to be appointed under s 108(1). At the date at which this volume states the law no such day had been appointed.

2 Courts and Legal Services Act 1990 s 58B(2) (prospectively added: see note 1). See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1831. 'Proceedings' includes any sort of proceedings for resolving disputes (and not just proceedings in a court), whether commenced or contemplated: see s 58B(6) (prospectively added: see note 1). A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any amount payable under a litigation funding agreement: s 58B(8) (as so prospectively added).

3 Ie the conditions applicable to it by virtue of the Courts and Legal Services Act 1990 s 58B.

4 Courts and Legal Services Act 1990 s 58B(1) (prospectively added: see note 1). See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1831.

5 Regulations under head (1) in the text may require a person to be approved by the Lord Chancellor or by a prescribed person: Courts and Legal Services Act 1990 s 58B(4) (prospectively added (see note 1); amended by SI 2005/3429). Before making regulations the Lord Chancellor is required to consult with certain persons: see the Courts and Legal Services Act 1990 s 58B(7) (as so prospectively added; amended by SI 2005/3429).

6 le by virtue of the Courts and Legal Services Act 1990 s 58A(1), (2) (see PARA 953).

7 The requirements which the Lord Chancellor may prescribe under head (4) in the text include requirements for the funder to have provided prescribed information to the litigant before the agreement is made and may be different for different descriptions of litigation funding agreements: Courts and Legal Services Act 1990 s 58B(5) (prospectively added (see note 1); amended by SI 2005/3429).

8 Courts and Legal Services Act 1990 s 58B(3) (prospectively added (see note 1); amended by SI 2005/3429). See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1831.

9 Courts and Legal Services Act 1990 s 58B(9) (prospectively added: see note 1). At the date at which this volume states the law no such rules had been made.

UPDATE

954 Litigation funding agreements

TEXT AND NOTES--See also Courts and Legal Services Act 1990 s 58AA (added by Coroners and Justice Act 2009 s 154(2)) which provides for the regulation of damages-based agreements in respect of claims relating to employment matters.

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(v) Contingency Fees

955. Prohibition of contingency fees.

A solicitor must not enter into an arrangement to receive a contingency fee for work done in prosecuting or defending any contentious proceedings before a court in England and Wales, a British court-martial or an arbitrator except as permitted by statute or the common law¹. Nor may a solicitor enter into an arrangement to receive a contingency fee for work done in prosecuting or defending any contentious proceedings before an overseas court or arbitrator except as permitted by statute or common law².

In respect of any claim arising out of death or personal injury, a solicitor must not enter into an arrangement for the referral of clients with or act in association with any person whose business, or part of whose business is to make, support or prosecute claims arising as a result of death or personal injury and who in the course of such business, solicits or receives contingency fees³ in respect of such claims⁴.

1 Solicitors' Code of Conduct 2007 r 2.04(1). Similar provisions apply in relation to an overseas practice: see r 15.02(4).

2 See the Solicitors' Code of Conduct 2007 r 2.04(2).

3 For the purpose of the Solicitors' Code of Conduct 2007 r 9.01(4), (5) 'contingency fee' means any sum (whether fixed or calculated either as a percentage of the proceeds or otherwise howsoever) payable only in the event of success in the prosecution or defence of any action, suit or other contentious proceedings: r 9.01(6).

4 See the Solicitors' Code of Conduct 2007 r 9.01(4). As to an exception see r 9.01(5).

UPDATE

955 Prohibition of contingency fees

NOTE 1--Solicitors' Code of Conduct 2007 r 15.02 amended on 31 March 2009.

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(vi) Delivery of Bill of Costs

956. Necessity for delivery of bill of costs.

Subject to certain exceptions¹ no action² may be brought for the recovery of any costs due to a solicitor³ before the expiration of one month⁴ from the date on which a bill of those costs is delivered in accordance with the statutory requirements⁵. Where a bill is proved to have been delivered in compliance with those requirements it is not necessary in the first instance for the solicitor to prove the contents of the bill and it must be presumed until the contrary is shown to be a bill bona fide complying with the Solicitors Act 1974⁶.

The requirements as to the delivery of a bill apply only where the business to which the solicitor's claim relates was done by him in his professional capacity⁷. He need not deliver a bill where his claim relates to business of a different kind⁸.

1 If there is probable cause for believing that the party chargeable with the costs:

330 (1) is about to quit England and Wales, to become bankrupt or to compound with his creditors;
or

331 (2) is about to do any other act which would tend to prevent or delay the solicitor obtaining payment,

then, notwithstanding that one month has not expired from the delivery of the bill, the High Court may order that the solicitor be at liberty to commence an action to recover his costs and may order that those costs be assessed: Solicitors Act 1974 s 69(1)(a), (b). The Solicitors Act 1974 s 69(1) is prospectively amended by the Legal Services Act 2007 Sch 16 para 64(1), (2) which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

Where the bill related wholly or partly to contentious business (see PARA 933 note 2) done in a county court and the amount of the bill does not exceed £5,000, the county court in which any part of the business was done may exercise the powers and duties of the High Court under ss 69-71: s 69(3) (amended by SI 1991/724). As to the meaning of 'costs' see PARA 835 note 6.

The provisions of the Solicitors Act 1974 s 69 do not apply in relation to a contentious business agreement made pursuant to s 59 (see PARA 945): s 60(1). The provisions of the Solicitors Act 1974 relating to remuneration do not apply to an Irish solicitor suing in England and Wales for work done in Ireland: *Kernaghan v Wadeson* (1855) 3 CLR 764.

2 As to the solicitor's remedies for costs see PARA 993 et seq.

3 In the Solicitors Act 1974 ss 68-71 'solicitor' includes the executors, administrators and assignees of a solicitor: s 68(3).

4 I.e. one calendar month: Interpretation Act 1978 s 5, Sch 1. The month is reckoned exclusive of the date of delivery: *Blunt v Heslop* (1838) 8 Ad & El 577. Where the bill is posted the month begins on the day following that on which the bill will be delivered in the ordinary course of post: *Browne v Black* [1912] 1 KB 316, CA.

A statutory demand served within the one month period is not an 'action' within the meaning of the Solicitors Act 1974 s 69(1): *Re a Debtor (No 8 of 1991)* [1993] Ch 286, [1992] 4 All ER 301.

5 Solicitors Act 1974 s 69(1). As to the statutory requirements see s 69(2A), (2C) and PARA 962 et seq. The requirement cannot be avoided by taking a cheque from the client and suing on it: *Martin Boston & Co (a firm) v Levy* [1982] 3 All ER 193, [1982] 1 WLR 1434. Until a day to be appointed (ie the coming into force of the Legal Services Act 2007 s 13 (see PARA 509)) the statutory requirements also include in a case where the costs are due to a firm that the bill must be signed by a partner of the firm, either in his own name or in the name of the firm, or on his behalf by any employee of the firm authorised by him to sign: see Sch 22 para 14.

6 Solicitors Act 1974 s 69(2E) (added by the Legal Services Act 2007 Sch 16 para 64(3)). Every application for an order for the assessment of a solicitor's bill or for the delivery of a solicitor's bill and for the delivery up by a solicitor of any documents in his possession, custody or power must be made in the matter of that solicitor: Solicitors Act 1974 s 72(1). The Solicitors Act 1974 s 72(1) is prospectively amended by the Legal Services Act 2007 Sch 16 para 67 which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

7 *Re Shilson, Coode and Co* [1904] 1 Ch 837 and see *Re Baker, Lees & Co* [1903] 1 KB 189, CA.

8 *Bush v Martin* (1863) 2 H & C 311 and see *Mowbray v Fleming* (1809) 11 East 285; *Re Eldridge* (1849) 12 Beav 387; *Re Inderwick* (1883) 25 ChD 279, CA; *Hagart and Burn-Murdoch v IRC* [1929] AC 386 at 392-393, HL (where it was held that lending money was not part of professional business; distinguished in *Jennings (Inspector of Taxes) v Barfield and Barfield* [1962] 2 All ER 957, [1962] 1 WLR 997 where it was held that giving a guarantee was part of professional business).

UPDATE

956 Necessity for delivery of bill of costs

NOTES 1, 6--Amendments made by Legal Services Act 2007 Sch 16 paras 64(2), 67 in force 1 January 2010: SI 2009/3250.

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957. Disbursements.

A distinction must be drawn between professional disbursements, that is to say those made by the solicitor in his professional capacity which must be included in the bill of costs, and payments made by him merely as agent or on behalf of the client which must be inserted in a separate cash account¹, and not in the bill of costs².

Professional disbursements include payments which are necessarily made by the solicitor in pursuance of his professional duty³ such as court fees⁴ or counsel's fees⁵ or which are sanctioned as professional disbursements by the general and established custom of the profession⁶. Payments which are made by the solicitor merely as a matter of convenience and not in pursuance of his professional duty and which are therefore to be regarded as advances to the client⁷ such as payments of money into court as security for costs⁸, payments of stamp duty⁹, capital transfer tax¹⁰ or other duties¹¹ and payments due from the client whether under a judgment¹² or a contract¹³ are not professional disbursements.

1 The order for assessment directs the solicitor to give credit for money received from or on account of the client and to charge all money paid on his behalf. This is the purpose of the cash account. It is considered in detail in *Re Le Brasseur and Oakley* [1896] 2 Ch 487, CA.

The cash account need not follow any particular form but should identify all payments and receipts. It need not, however, disclose the nature of the payments or the debts which they discharged as this information will be supplied on vouching the account: *Re Harman* (1915) 59 Sol Jo 351.

2 *Re Remnant* (1849) 11 Beav 603. See also *Re Kingdon and Wilson* [1902] 2 Ch 242, CA; *Re Blair and Girling* [1906] 2 KB 131, CA; and *Browne v Barber* [1913] 2 KB 553 at 577, CA. As to the requirement to deliver a bill of costs see PARA 956.

3 *Re Remnant* (1849) 11 Beav 603. A London agent's charges are to be given in detail as part of the country solicitor's bill and should not be included as a lump sum as a disbursement: *Re Pomeroy and Tanner (Solicitors)* [1897] 1 Ch 284. As to legal agents see further PARA 1022 et seq.

4 *Re Grant, Bulcraig & Co* [1906] 1 Ch 124.

5 *Re Metcalfe* (1862) 30 Beav 406; *Re Harrison* (1886) 33 Ch D 52, CA; *Re Richards* [1912] 1 Ch 49 at 53.

6 *Franklin v Featherstonhaugh* (1834) 1 Ad & El 475; *Re Remnant* (1849) 11 Beav 603. As to the inclusion of as yet unpaid disbursements in the bill of costs see PARA 959.

7 *Re Remnant* (1849) 11 Beav 603; *Re Taylor, Stileman and Underwood* [1891] 1 Ch 590, CA; *Wardle v Nicholson* (1833) 4 B & Ad 469.

8 *Re Buckwell and Berkeley* [1902] 2 Ch 596, CA; *Re Grant, Bulcraig & Co* [1906] 1 Ch 124.

9 *Re Blair and Girling* [1906] 2 KB 131, CA.

10 *Re Kingdon and Wilson* [1902] 2 Ch 242, CA.

11 *Re Bedson* (1845) 9 Beav 5; *Re Haigh* (1849) 12 Beav 307.

12 *Woollison v Hodgson* (1834) 2 Dowl 360; *Harrison v Ward* (1835) 4 Dowl 39.

13 *Re Kingdon and Wilson* [1902] 2 Ch 242 at 254, CA.

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958. Form of bill of costs.

In contentious business¹ where the solicitor's remuneration is not the subject of a contentious business agreement² the bill of costs may, at the solicitor's option, be either for a gross sum or contain detailed items³ but at any time before service of a writ or other originating process for the recovery of the costs⁴ included in a gross sum bill⁵ and before the expiration of three months from delivery of the bill⁶ the party chargeable may require the solicitor to deliver a bill containing detailed items and if such a requirement is made the gross sum bill is of no effect⁷. If a gross sum bill is assessed⁸ these provisions do not prejudice any rules of court with respect to assessment and the solicitor must furnish the costs officer with such details of the costs covered by the bill as he may require⁹.

1 As to the meaning of 'contentious business' see PARA 933 note 2.

2 As to the meaning of 'contentious business agreement' see PARA 945.

3 Solicitors Act 1974 s 64(1).

4 As to the meaning of 'costs' see PARA 835 note 6.

5 See the Solicitors Act 1974 s 64(2)(a).

6 See the Solicitors Act 1974 s 64(2)(b).

7 Solicitors Act 1974 s 64(2). If the client requires a detailed bill the solicitor can recover the full amount of it as assessed, even if it exceeds the amount of the earlier gross sum billed: *Re Taxation of Costs, Re A Solicitor* [1943] KB 69, [1942] 2 All ER 499, CA, decided on the Solicitors' Remuneration (Gross Sum) Order 1934, SR & O 1934/548 (revoked). See also *Carlton v Theodore Goddard & Co* [1973] 2 All ER 877, [1973] 1 WLR 623.

8 Ie whether under the Solicitors Act 1974 s 64 or otherwise: s 64(4). Where an action is begun on a gross sum bill the court, if so requested by the party chargeable before the expiration of one month from the service on him of the writ or other originating process, must order the bill to be assessed: s 64(3). As to the right to an order for assessment see PARA 971 et seq. The Solicitors Act 1974 s 64(3) is prospectively amended by the Legal Services Act 2007 Sch 16 para 60(a) which reflects the replacement of taxation of costs with assessment of costs.

9 Solicitors Act 1974 s 64(4). The Solicitors Act 1974 s 64(4) is prospectively amended by the Legal Services Act 2007 Sch 16 para 60(b) which reflects the replacement of taxation of costs with assessment of costs and the replacement of a taxing officer with a costs officer.

UPDATE

958 Form of bill of costs

NOTES 8, 9--Amendments made by Legal Services Act 2007 Sch 16 para 60 in force 1 January 2009: SI 2009/3250.

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959. Contents of bill of costs.

A bill of costs¹ must contain sufficient information to enable the client to obtain advice as to its assessment² and the costs officer to assess it³. In relation to non-contentious business⁴ the gross sum bill must contain a summarised statement of the work done sufficient to inform the client what he is being asked to pay for⁵ although it is material to consider what information was in the client's possession⁶. The bill should show the whole of the fees, charges and disbursements in respect of the particular business done⁷. Each item should state its subject matter precisely and not in vague and general terms⁸. If the bill relates to contentious business⁹ the action or actions in question and the court concerned should be specified¹⁰.

The bill of costs may include costs payable in discharge of a liability properly incurred by the solicitor on behalf of the party to be charged with the bill (including counsel's fees¹¹) notwithstanding that those costs have not been paid before the delivery of the bill, but those costs must be described in the bill as not then paid and if the bill is assessed they will not be allowed unless paid before assessment is completed¹². Charges by anticipation in respect of costs to be incurred on distributing a trust fund may properly be included in a bill to be paid out of the trust fund before distribution¹³.

Value added tax, where applicable, must be clearly shown¹⁴.

1 As to the requirement to deliver a bill of costs see PARA 956; and as to the meaning of 'costs' see PARA 835 note 6.

2 *Waller v Lacy* (1840) 1 Man & G 54 at 69; *Engleheart v Moore* (1846) 15 M & W 548; *Keene v Ward* (1849) 13 QB 515; *Haigh v Ousey* (1857) 7 E & B 578. A bill containing scandalous matter will be struck out: *Re Miller*, *Re French*, *Love v Hills* (1884) 54 LJ Ch 205.

3 *Slingsby v A-G* [1918] P 236, CA.

4 As to the meaning of 'non-contentious business' see PARA 933 note 4.

5 *Re A Solicitor, Re Taxation of Costs* [1955] 2 QB 252, [1955] 1 All ER 283, CA (form of bill delivered under the Solicitors' Remuneration Order 1883, Sch 2 (substituted by SI 1953/117) (revoked)). A gross sum bill containing charges for both contentious and non-contentious business is bad. As to gross sum bills see PARA 958.

6 *Cook v Gillard* (1852) 1 E & B 26; *Haigh v Ousey* (1857) 7 E & B 578, 583; *Cobbett v Wood* [1908] 1 KB 590 at 594 (revsd [1908] 2 KB 420, CA). The decision of the Court of Appeal in *Cobbett v Wood* does not go so far as to involve the inclusion in the bill of all relevant information as to all items; it appears that the decision in *Haigh v Ousey* is still good law. It is also settled that inter partes costs must be included in the bill of the solicitor to his own client: see note 7.

7 *Cobbett v Wood* [1908] 1 KB 590 at 594 (revsd [1908] 2 KB 420, CA) where the bill omitted all items of inter partes costs and charged extra costs only. See also *Waller v Lacy* (1840) 1 Man & G 54, 69; *Pigot v Cadman* (1857) 1 H & N 837. Where inter partes costs have been received from an opponent the items should be charged in the bill of the solicitor to his own client and credit for the sums received should be given in the cash account: see *Waller v Lacy*; *Cobbett v Wood*; *Re Osborn and Osborn* [1913] 3 KB 862, CA; *Bury v Greenwood* [1934] WN 119.

Similarly the charges of the London agent must be set out in detail: *Re Pomeroy and Tanner (Solicitors)* [1897] 1 Ch 284. See also *McCullie v Butler* [1962] 2 QB 309, [1961] 2 All ER 554 where charges incurred in employing a foreign agent (a Scottish solicitor) were taxable as disbursements and it was said that details of the circumstances requiring the employment of the foreign agent should be set out as well as a detailed charge for individual items. As to legal agents see further PARA 1022 et seq.

8 *Re Pender* (1847) 10 Beav 390; *Re A Solicitor, Re Taxation of Costs* [1955] 2 QB 252, [1955] 2 All ER 283, CA.

9 As to the meaning of 'contentious business' see PARA 933 note 2.

10 *Lewis v Primrose* (1844) 6 QB 265; *Engelheart v Moore* (1846) 15 M & W 548; *Martindale v Falkner* (1846) 2 CB 706; *Ivimey v Marks* (1847) 16 M & W 843; *Anderson v Boynton* (1849) 13 QB 308; *Sargent v Gannon* (1849) 7 CB 742; *Dimes v Wright* (1849) 8 CB 831. The information may be derived from letters accompanying the bill: *Cozens v Graham* (1852) 12 CB 398. See also *Cook v Gillard* (1852) 1 E & B 26 at 35.

11 As counsel's fees are not recoverable at law they do not constitute a legally binding debt from a client while they remain unpaid by the solicitor. Formerly such unpaid fees were not treated as disbursements: *Sadd v Griffin* [1908] 2 KB 510, CA; *Re Taxation of Costs, Re A Solicitor* [1936] 1 KB 523 at 530-531, [1936] 1 All ER 491 at 494-495, CA.

12 Solicitors Act 1974 s 67. Both requirements must be fulfilled. In *Tearle & Co (a firm) v Sherring* (29 October 1993, unreported) Wright J decided that he had the power to permit solicitors to amend their original bill of costs notwithstanding that they had not described certain disbursements as not then paid. He reached this view having considered the judgment of Farwell J in *Re Grant Bulcraig and Co* [1906] 1 Ch 124. The assessment is completed when every item of the bill has been dealt with: see *Re Hildesheim* [1914] 3 KB 841, CA. The Solicitors Act 1974 s 67 is prospectively amended by the Legal Services Act 2007 Sch 16 para 63 which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

13 *Re Miles* [1903] 2 Ch 518.

14 See PARA 960.

UPDATE

959 Contents of bill of costs

NOTE 12--Amendment made by Legal Services Act 2007 Sch 16 para 63 in force 1 January 2010: SI 2009/3250.

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960. Value added tax.

As persons supplying¹ professional services, solicitors are subject to value added tax and are liable to be registered² if at the end of any month the value of taxable supplies³ in the period of one year then ending has exceeded £67,000⁴ and to pay tax at the rate of 17.5% on the value of professional services rendered⁵.

In the case of civil proceedings and non-contentious business⁶ all bills of costs, fees and disbursements on which VAT is included must be divided into separate parts so as to show work done on a day-to-day basis before, on and after the date or dates from which any change in the rate of VAT takes effect⁷. Value added tax attributable to any disbursement must (except in the case of an inter partes bill where such tax is not claimed) be shown stating if it has been paid and must be indicated in a separate VAT column inserted to the left of the normal disbursement column⁸. General disbursements such as postage and fares which are normally treated as part of a solicitor's overheads must be charged with VAT⁹. The summary at the end of the bill must include additional columns for VAT on profit costs as allowed on assessment and VAT on disbursements so that the tax can be cast separately¹⁰.

VAT should not be included in a claim for costs in an inter partes bill of costs if the receiving party is able to recover it as input tax¹¹. Where there has been a change in the rate of VAT during the period to which the bill relates, it will be assumed that an election has been made to charge VAT at the lower rate¹². Value added tax attributable to any disbursement, such as an expert's report, must be shown (except in the case of an inter partes bill where VAT is not claimed) as a separate item in the receipt or voucher¹³.

Where a solicitor acts in litigation on his own behalf, even on a matter arising out of his practice, he is not treated for the purposes of VAT as having supplied services and therefore no VAT is chargeable on the bill of that solicitor¹⁴.

1 As to the meaning of 'supply' see the Value Added Tax Act 1994 s 5(2); and see also **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 27.

2 Solicitors may, however, be registered in the name of the firm, and no account is to be taken, in determining whether services are supplied by or to them, of any changes in the partnership: Value Added Tax Act 1994 s 45(1).

3 As to the meaning of 'taxable supply' see the Value Added Tax Act 1994 s 4(2); and see also **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 18.

4 See the Value Added Tax Act 1994 s 3(2), Sch 1 para 1(1)(a) (amended by SI 2008/707).

5 See the Value Added Tax Act 1994 s 2(1); and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 5.

6 As to the meaning of 'non-contentious business' see PARA 933 note 4.

7 *Practice Direction (No 1 of 1994)* [1994] 2 All ER 57, sub nom *Practice Direction (Taxation: VAT) (No 1 of 1994)* [1994] 1 WLR 431 para 8.

8 *Practice Direction (No 1 of 1994)* [1994] 2 All ER 57, sub nom *Practice Direction (Taxation: VAT) (No 1 of 1994)* [1994] 1 WLR 431 para 10.

9 *Practice Direction (No 1 of 1994)* [1994] 2 All ER 57, sub nom *Practice Direction (Taxation: VAT) (No 1 of 1994)* [1994] 1 WLR 431 para 11(1). VAT is added to sheriff's fees: see *Practice Direction (No 1 of 1994)* [1994] 2 All ER 57, sub nom *Practice Direction (Taxation: VAT) (No 1 of 1994)* [1994] 1 WLR 431 para 11(2).

10 See *Practice Direction (No 1 of 1994)* [1994] 2 All ER 57, sub nom *Practice Direction (Taxation: VAT) (No 1 of 1994)* [1994] 1 WLR 431 para 13.

11 See *Practice Direction (No 2 of 1994)* [1994] 2 All ER 61, sub nom *Practice Direction (Crown Court: VAT) (No 2 of 1994)* [1994] 1 WLR 435 para 2.

12 See *Practice Direction (No 2 of 1994)* [1994] 2 All ER 61, sub nom *Practice Direction (Crown Court: VAT) (No 2 of 1994)* [1994] 1 WLR 435 paras 6-7. Where a lump sum charge has been made, if necessary the sum must be apportioned: see *Practice Direction (No 2 of 1994)* [1994] 2 All ER 61, sub nom *Practice Direction (Crown Court: VAT) (No 2 of 1994)* [1994] 1 WLR 435 para 8.

13 See *Practice Direction (No 2 of 1994)* [1994] 2 All ER 61, sub nom *Practice Direction (Crown Court: VAT) (No 2 of 1994)* [1994] 1 WLR 435 para 9. General disbursements should be charged with VAT and VAT is added to sheriff's fees: see *Practice Direction (No 2 of 1994)* [1994] 2 All ER 61, sub nom *Practice Direction (Crown Court: VAT) (No 2 of 1994)* [1994] 1 WLR 435 para 10.

14 See *Practice Direction (No 1 of 1994)* [1994] 2 All ER 57, sub nom *Practice Direction (Taxation: VAT) (No 1 of 1994)* [1994] 1 WLR 431 paras 18-20; *Practice Direction (No 2 of 1994)* [1994] 2 All ER 61, sub nom *Practice Direction (Crown Court: VAT) (No 2 of 1994)* [1994] 1 WLR 435 paras 15-17.

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961. Delivery of bill in parts.

The whole bill of costs need not be delivered at once; there is no objection to a delivery in parts or, if the retainer is not an entire contract, to a delivery of successive bills relating to particular periods or particular groups of items, but if there is an entire contract successive bills which are intended to be separately enforceable may not be delivered unless the client consents or the matter is completed or a natural break has occurred¹. Where some part of the bill is given with proper detail and the remainder is not so given, costs have been recovered in respect of the items given with proper detail², and it seems that the proper question whether judgment may be recovered on part of a bill may turn on the proportions which the correct and incorrect parts bear to each other³, although such a ruling can hardly be maintained as a matter of principle where the assessment is under the Solicitors Act 1974⁴.

1 *Re Cartwright* (1837) LR 16 Eq 469; *Ottaway v Hamilton* (1878) 3 CPD 393, CA; *Cobbett v Wood* [1908] 2 KB 420, CA. Separate bills relating to distinct transactions are not to be treated as one bill just because they are delivered together: *Re Ward* [1896] 2 Ch 31, CA. As to when there are natural breaks in a transaction permitting different bills to be sent in see PARA 778 note 9; and see *Re Romer and Haslam* [1893] 2 QB 286, CA; *Davidsons v Jones-Fenleigh* (1980) 124 Sol Jo 204, CA; *Chamberlain v Boodle & King (a firm)* [1982] 3 All ER 188, [1982] 1 WLR 1443n, CA.

2 *Waller v Lacy* (1840) 1 Man & G 54; *Ivimey v Marks* (1847) 16 M & W 843; *Cook v Gillard* (1852) 1 E & B 26; *Haigh v Ousey* (1857) 7 E & B 578; *Pigot v Cadman* (1857) 1 H & N 837; *Pilgrim v Hirschfeld* (1863) 9 LT 288; *Blake v Hummel* (1884) 51 LT 430.

3 See *Blake v Hummel* (1884) 51 LT 430; *Re Pomeroy and Tanner (No 2)* (1897) 76 LT 149.

4 A 'bill of costs' in the Solicitors Act 1974 refers to a complete bill (*Ivimey v Marks* (1847) 16 M & W 843; *Storer & Co v Johnson* (1890) 15 App Cas 203 at 207, HL; *Cobbett v Wood* [1908] 2 KB 420, CA) and although that complete bill may be composed of parts separately delivered, assessment under the Solicitors Act 1974 s 70 (see PARA 971 et seq) must be assessed of the whole. If therefore assessment of part of a bill under s 70 could not be obtained (and *Storer & Co v Johnson* is authority that it could not) the consequence should follow that a bill which is defective in part is in law defective as a whole. Subject to this, if a solicitor is willing to abandon the defective part, the remainder of the bill may be treated as a whole and assessed.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(vi) Delivery of Bill of Costs/962. Signature on bill of costs.

962. Signature on bill of costs.

A bill of costs must be signed by the solicitor¹ or on his behalf by an employee of the solicitor authorised by him to sign or enclosed in, or accompanied by, a letter which is so signed and refers to the bill². The signature may be an electronic signature³.

¹ As to the meaning of 'solicitor' in this context see PARA 956 note 3; and see also PARA 956 note 5 (application to recognised bodies). See also *Ingle v M'Cutchan* (1884) 12 QBD 518; *Re Ward* (1885) 28 ChD 719.

² Solicitors Act 1974 s 69(2)(a), (2A) (s 69(2) substituted and s 69(2A), (2B) added by the Legal Services Act 2007 Sch 16 para 64(1), (2)). There is no statutory requirement that the signature must be in the full name of the firm but it is sensible so to sign: *Bartletts de Reya v Byrne* (1983) 127 Sol Jo 69, 133 NLJ 1101, CA; and see *Smith v Brown* (1831) 5 C & P 94; *Owen v Scales* (1842) 10 M & W 657. It is immaterial that the bill contains items of work done before the then partnership was constituted: *Pilgrim v Hirschfeld* (1863) 9 LT 288. The then partnership may sue in respect of such items as assignees of the old firm: *Penley v Anstruther* (1883) 52 LJ Ch 367. Where notice of assignment has not been given to the client a solicitor who did the work for the assignment may sign the bill and sue for the cost although the name of the new firm appears in the bill and also below his own signature: *McClean v Weaver* (1924) 41 TLR 47, CA. The Solicitors Act 1974 s 69(2A) has effect in relation to a bill of costs delivered by a recognised body by requiring that the bill must be signed on behalf of the recognised body by any manager or employee of the body authorised to do so or enclosed in, or accompanied by, a letter which is so signed and refers to the bill: see the Administration of Justice Act 1985 Sch 2 para 29 (substituted by the Legal Services Act 2007 Sch 16 para 115). As to the meaning of 'recognised body' see PARA 687 note 3.

³ Solicitors Act 1974 s 69(2B) (as added: see note 2). For these purposes references to an electronic signature are to be read in accordance with the Communications Act 2003 s 7(2) (see **TELECOMMUNICATIONS** vol 97 (2010) PARA 20); Solicitors Act 1974 s 69(5) (added by the Legal Services Act 2007 Sch 16 para 64(4)).

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963. Name of person to be charged.

The bill of costs must clearly show the person who is to be charged otherwise he will not be liable upon it¹. It is immaterial whether his name appears on the face of the bill² or is contained in some writing connected with the bill³, for instance the envelope in which it was sent⁴ or the letter accompanying it⁵.

1 *Manning v Glyn and Sheehan* (1835) 1 Jo Ex Ir 513, distinguished and doubted in *Roberts v Lucas* (1855) 11 Exch 41 where it was suggested that personal delivery to the person liable might be sufficient even though the name was not specified. There is no custom by which when a solicitor is instructed through patent agents he must look to them and not to the client for his charges and a bill addressed to both the agents and the client sufficiently names the client, although it seems that the name of the client alone should be given as the party chargeable: *Re Solicitors, Re Taxation of Costs* (1935) 79 Sol Jo 49.

2 *Phipps v Daubney* (1851) 16 QB 514, Ex Ch; *Mant v Smith* (1859) 4 H & N 324.

3 *Champ v Stokes* (1861) 6 H & N 683; *Kiernan v Brereton* (1866) 17 ICLR 203.

4 *Roberts v Lucas* (1855) 11 Exch 41.

5 *Taylor v Hodgson* (1845) 3 Dow & L 115. See also the Solicitors Act 1974 s 69(2A)(b); and PARA 966.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(vi) Delivery of Bill of Costs/964. Mode of delivery of bill of costs.

964. Mode of delivery of bill of costs.

The bill of costs must be delivered to the person to be charged with the bill personally¹ or to some person authorised to accept delivery on his behalf². It may be delivered to him personally³ or sent by post to him or left for him at his place of business⁴ or last known place of abode⁵ or to any address to which he may have directed letters to be sent⁶ or by means of an electronic communications network⁷ or by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible, but that the party has indicated to the person making the delivery his willingness to accept delivery of a bill in the form and manner used⁸. An action brought on a bill of costs which fails to meet one or more of the statutory requirements does not necessarily have to be dismissed without consideration of the merits and where appropriate the court may allow delivery of a fresh bill⁹.

1 Solicitors Act 1974 s 69(2)(b), (2C)(a) (s 69(2)(b) substituted and s 69(2C)-(2F), (6) added by the Legal Services Act 2007 Sch 16 para 64(3)). See also *Gridley v Austen* (1849) 16 QB 504; *Phipps v Daubney* (1851) 16 QB 514, Ex Ch; *Re Abbott* (1861) 4 LT 576; *Re Robertson* (1889) 42 ChD 553. In the case of mortgage transactions the bill is commonly delivered to the mortgagor since he bears the costs (*Re Robertson*); but nonetheless the mortgagee as client is also entitled to have the bill of his costs delivered to him: *Re Foster, Barnato v Foster* [1920] 3 KB 306, CA. The bill of costs of a solicitor trustee or his firm may be delivered to his co-trustee: *Re H P Davies & Son* [1917] 1 Ch 216. The defence that no signed bill has been delivered is available only to the client but a person who has undertaken to pay or has guaranteed the payment of the costs may have them assessed under the Solicitors Act 1974 s 71(1) (see PARA 966); see *Greening v Reeder* (1892) 67 LT 28. As to the necessity for delivering a bill of costs see PARA 956; and as to the meaning of 'costs' see PARA 835 note 6. Where a bill is proved to have been delivered in compliance with the requirements of the Solicitors Act 1974 s 69(2A), (2C), it is not necessary in the first instance for the solicitor to prove the contents of the bill and it is to be presumed, until the contrary is shown, to be a bill bona fide complying with the Solicitors Act 1974: s 69(2E) (as so added).

2 *Re Bush* (1844) 8 Beav 66; *Eggington v Cumberledge* (1847) 1 Exch 271; *Phipps v Daubney* (1851) 16 QB 514, Ex Ch; *Re Kellock* (1887) 56 LT 887; *Re Layton Steele & Co* (1890) 38 WR 652.

3 Solicitors Act 1974 s 69(2)(b), (2C)(a) (as substituted and added: see note 1). In the case of joint contractors delivery to one is sufficient, particularly where instructions have primarily been given by the person to whom the bill is delivered: *Crowder v Shee* (1808) 1 Camp 437; *Finchett v How and Jarratt* (1809) 2 Camp 275; *Oxenham v Lemon* (1823) 2 Dow & Ry KB 461; *Kiteley v Scofield and Harvey* (1842) 6 Jur 1059; *Edwards v Lawless* (1848) 6 CB 329; *Mant v Smith* (1859) 4 H & N 324.

4 *Edwards v Lawless* (1848) 6 CB 329; *Blandy v De Burgh* (1848) 6 CB 623.

5 Solicitors Act 1974 s 69(2)(b), (2C)(b) (as substituted and added: see note 1). If the bill is actually delivered it is a good delivery even though it was misdirected: *Welsh v Silwell* (1847) 11 Jur 471. An indication to any person for the purposes of the Solicitors Act 1974 s 69(2C)(c):

332 (1) must state the address to be used and must be accompanied by such other information as that person requires for the making of the delivery;

333 (2) may be modified or withdrawn at any time by a notice given to that person (s 69(2D) (as so added)).

A bill which is delivered as mentioned in s 69(2C)(c) is to be treated as having been delivered on the first working day after the day on which it was sent (unless the contrary is proved): s 69(2F) (as so added). For this purpose 'working day' means a day other than a Saturday, a Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971: Solicitors Act 1974 s 69(6) (as substituted: see note 1).

6 *Spier v Bernard* (1863) 8 LT 396.

7 As to the meaning of 'electronic communications network' see the Communications Act 2003; and **TELECOMMUNICATIONS** vol 97 (2010) PARA 60 (definition applied by the Solicitors Act 1974 s 69(6) (as added: see note 1)).

8 Solicitors Act 1974 s 69(2)(b), (2C)(c) (as substituted and added: see note 1).

9 *Zuliani v Veira* [1994] 1 WLR 1149, PC.

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965. Amendment of bill of costs.

For the purposes of assessment under the Solicitors Act 1974¹, the solicitor is, as a general rule, bound by his bill as delivered² and he is not entitled as of course to withdraw the bill delivered and substitute an amended one whether on the first bill he has overcharged³ or undercharged⁴ his client, although the court has power to give leave to amend the bill⁵ or to allow it to be withdrawn⁶. Leave will only be granted in special circumstances and where the solicitor has acted fairly towards the client, for instance where the solicitor informs the client that the first bill includes charges which cannot be sustained on assessment⁷ or offers to correct a mistake before an application to assess is made⁸. Where there has been an inadvertent error, the solicitor will be permitted to rectify the bill, for example by inserting or increasing the item unintentionally omitted or undercharged, subject perhaps to a condition that the incidence of the costs of the assessment be not altered by the amendment⁹, or by submitting a fresh bill where unpaid disbursements have not been so described or separately set out¹⁰. Where a lump sum is claimed in the bill in respect of a particular transaction, the solicitor may on assessment bring in particulars showing how it is made up¹¹ although a gross sum bill may not after three months from delivery be replaced¹² by a detailed bill for a higher sum¹³. In general a charge at an aggregate figure of which insufficient details have been given may not be increased upon amending the bill¹⁴.

1 The assessment under the Solicitors Act 1974 ss 70-71: see PARA 971 et seq. The rule does not apply to taxations (now assessments) on the indemnity basis, the bill of costs in such cases being susceptible to amendment at any time in any way and at any time before the taxation (now assessment) is concluded: *Davis v Earl of Dysart (No 2)* (1855) 21 Beav 124 at 132; affd (1856) 8 De GM & G 33. See also *Sadd v Griffin* [1908] 2 KB 510, CA. The rule has been held not to apply to a taxation (now assessment) ordered in an action by a solicitor for work done: see *Lumsden v Shipcote Land Co* [1906] 2 KB 433, CA, where the plaintiff delivered a second bill in place of an earlier lesser bill, and the court, having found for the plaintiff on liability, ordered that the amount of remuneration be referred to a taxing master as referee to consider both bills, as well as other matters in determining the amount properly payable. See note 5.

2 *Loveridge v Botham* (1797) 1 Bos & P 49; *Hays v Trotter* (1834) 5 B & Ad 1106; *Re Carven* (1845) 8 Beav 436; *Re Heather* (1870) 5 Ch App 694; *Re Thompson* (1855) 30 ChD 441 at 450, CA, per Cotton J; *Re Jones (A Solicitor), ex p King* (1886) 54 LT 648; *Re Grant Bulcraig and Co* [1906] 1 Ch 124; *Re Louch* [1930] 2 Ch 63. The reason for the rule is to prevent any attempt being made by a solicitor to impose on his client who does not know what the proper charges are by sending in a bill which could not stand taxation (now assessment) and then when taxation is insisted upon or threatened, which might result in the solicitor being liable for the cost of taxation (now assessment), sending in another bill which he knows can stand taxation (now assessment): see *Re Thompson* at 448; *Re Louch* at 65.

3 *Re Blakesley and Beswick* (1863) 32 Beav 379; *Re Heather* (1870) 5 Ch App 694, followed in *Re Holroyde and Smith* (1881) 43 LT 722.

4 *Re Wells* (1845) 8 Beav 416; *Re Walters* (1845) 9 Beav 299. See also *Re Andrews* (1853) 17 Beav 510. Where a bill has been prepared in a great hurry and is intended by the solicitor only as an estimate, leave to amend may be given but subject to such leave being given the bill is assessable as delivered: *Re Gaitskell* (1845) 1 Ph 576. It is a question of fact whether the solicitor has delivered a memorandum of his charges or a bill of costs (*Re Smith and Son* (1901) 45 Sol Jo 469) and a solicitor who has delivered an explanatory memorandum of charges by anticipation may be allowed to amend (*Re Paice and Cross* (1914) 58 Sol Jo 593). Where solicitors through inadvertence omitted certain words from their bill the court permitted an amendment of the delivered bill rather than requiring the solicitors to withdraw the bill and submit a fresh one: *Tearle & Co (a firm) v Sherring* (29 October 1993, unreported) per Wright J; and see *Re Grant Bulcraig & Co* [1906] 1 Ch 124.

5 *Re Thompson* (1885) 30 ChD 441 at 450, CA; *Re Stead, Smith v Stead* [1913] 1 Ch 240. The client's consent to the amendment is not necessarily sufficient: *Re Heather* (1870) 5 Ch App 694. If a second bill is

delivered and the solicitor obtains judgment for the costs covered by it without his opponent applying for detailed assessment so that an application for assessment can no longer be made without proof of special circumstances (see the Solicitors Act 1974 s 70(3); and PARA 974) the court may nevertheless direct moderation under its inherent jurisdiction and the rule prohibiting amendment does not apply to moderation: *Lumsden v Shipcote Land Co* [1906] 2 KB 433, CA. See also *Tearle & Co (a firm) v Sherring* (29 October 1993, unreported); and *Re Grant Bulcraig & Co* [1906] 1 Ch 124.

6 *Chappell v Mehta* [1981] 1 All ER 349, CA.

7 *Re Thompson* (1885) 30 ChD 441 at 450, CA, per Cotton J.

8 *Re Chambers* (1865) 34 Beav 177 at 179.

9 *Marshall v Oxford* (1832) 5 Sim 456; *Re Walters* (1845) 9 Beav 299; *Re Whalley* (1855) 20 Beav 576; and see *Tearle & Co (a firm) v Sherring* (29 October 1993, unreported); *Re Grant Bulcraig & Co* [1906] 1 Ch 124.

10 See *Re Taxation of Costs, Re A Solicitor* [1943] Ch 48, [1943] 1 All ER 157, followed in *Re A Solicitor* [1951] 1 All ER 592, CA; and approved in *Polak v Marchioness of Winchester* [1956] 2 All ER 660, [1956] 1 WLR 818, CA. See also *Tearle & Co (a firm) v Sherring* (29 October 1993, unreported); *Re Grant Bulcraig & Co* [1906] 1 Ch 124.

11 *Re Tilleard* (1863) 32 Beav 476; *Re Russell Son & Scott* (1886) 55 LT 71, CA; *Re Kellock* (1887) 56 LT 887. As to the solicitor's duty to furnish to the costs officer details of the costs contained in a gross sum bill see PARA 959.

12 See under the Solicitors Act 1974 s 64(1): see PARA 958.

13 *Carlton v Theodore Goddard & Co* [1973] 2 All ER 877, [1973] 1 WLR 623.

14 *Re Russell Son & Scott* (1886) 55 LT 71, CA; *Re Stead, Smith v Stead* [1913] 1 Ch 240. Where successive bills are delivered, each bill is not itself a whole bill so the charges in earlier bills may be added to by the last: *Re Cartwright* (1873) LR 16 Eq 469. If in contentious business a solicitor delivers a gross sum bill and the party chargeable requires the delivery of an itemised bill, the gross sum bill ceases to be of effect (see PARA 958) and the solicitor can recover the full amount of the itemised bill even if it exceeds the previous gross sum bill (see PARA 958 note 7).

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966. Order for delivery of bill of costs.

The jurisdiction of the High Court to order the delivery by a solicitor¹ of a bill of costs² extends to cases in which no business has been done by him in the High Court³ and the county court has the same jurisdiction as the High Court to make orders for the delivery of a bill of costs where the bill relates wholly or partly to contentious business⁴ done by the solicitor in that county court⁵. Similarly, both the High Court and county court may make orders for the delivery up of, or otherwise in relation to, any documents in the possession, custody or power of the solicitor⁶. The jurisdiction of the High Court to make such an order rests initially in the inherent jurisdiction of the court over its own officers, this being confirmed by the wording of the Solicitors Act 1974⁷.

If a solicitor makes no claim for costs he will not be ordered to deliver a bill of costs⁸, and since an order for the delivery of a bill obliges the solicitor to deliver a cash account of relevant monetary transactions, if he makes no claim for costs he will not be ordered to deliver a cash account⁹ although he will still be accountable like any other agent for his principal's money. A solicitor may not himself maintain a defence that the employment was illegal¹⁰ nor can he resist on the ground of delay while he remains able to prepare the requisite bill¹¹.

Where any person other than the client¹² is or was liable to pay the bill¹³ or the costs are to be paid by a trustee or personal representative¹⁴, the person liable to pay or any person interested in any property out of which the trustee or personal representative has paid or is entitled to pay the bill may apply for an assessment¹⁵ and if the court orders an assessment it may order the solicitor to deliver a copy of the bill to the applicant upon payment of the cost of the copy¹⁶.

1 As to the meaning of 'solicitor' in this context see PARA 956 notes 3, 5.

2 As to the meaning of 'costs' see PARA 835 note 6.

3 Solicitors Act 1974 s 68(1). For the purposes of s 68 'solicitor' includes the executors, administrators and assignees of a solicitor: s 68(3).

4 As to the meaning of 'contentious business' see PARA 933 note 2.

5 Solicitors Act 1974 s 68(2).

6 Solicitors Act 1974 s 68(1), (2). As to the court's inherent jurisdiction in relation to the delivery up of client's papers see PARA 758.

7 *Re Foster, Barnato v Foster* [1920] 3 KB 306 at 314, CA. See also *Re Foljambe* (1846) 9 Beav 402 (order under inherent jurisdiction); and PARA 968. The jurisdiction to order a bill to be delivered is distinct from the jurisdiction to order the bill to be assessed and delivery may be ordered even though afterwards assessment is not ordered: see *Duffet v McEvoy* (1885) 10 App Cas 300, PC; *Re West, King and Adams, ex p Clough* [1892] 2 QB 102 at 108. In the exercise of its discretion the court may refuse an order on account of the client's conduct and delay: *Re A Solicitor, Re Taxation of Costs* [1947] Ch 274, [1947] 1 All ER 369.

8 *Re Griffith, Eggar and Griffith* (1891) 7 TLR 269, DC.

9 See *Re Landor* [1899] 1 Ch 818.

10 *Re Thomas, Jacquess v Thomas* [1894] 1 QB 747, CA.

11 *Re Baylis* [1896] 2 Ch 107, 118, CA. See also *Re Ker* (1850) 12 Beav 390.

12 As to the meaning of 'client' see PARA 835 note 6.

13 See the Solicitors Act 1974 s 71(1). The Solicitors Act 1974 s 71 is prospectively amended by the Legal Services Act 2007 Sch 16 para 66 which reflects the replacement of taxation of costs with assessment of costs.

14 See the Solicitors Act 1974 s 71(3).

15 See the Solicitors Act 1974 s 71(1), (3).

16 Solicitors Act 1974 s 71(7); and see *Tanner v Lea* (1842) 4 Man & G 617; *Re Blackmore* (1851) 13 Beav 154; *Re Jones and Everett* [1904] 2 Ch 363. A copy of the bill may also be ordered to be delivered in pursuance of a written undertaking to do so: *Re Bailey* (1865) 34 Beav 392. This jurisdiction is also exercisable in relation to a recognised body: see the Administration of Justice Act 1985 Sch 2 para 27. As to the meaning of 'recognised body' see PARA 687 note 3.

UPDATE

966 Order for delivery of bill of costs

NOTE 13--Amendment made by Legal Services Act 2007 Sch 16 para 66 in force 1 January 2010: SI 2009/3250.

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(vii) Assessment of Costs

A. INTRODUCTION

967. Scrutiny of a solicitor's remuneration.

A solicitor is remunerated for any services he provides in two ways:

- 1402 (1) by his own client, even if the client is repaid by a third person¹; and
- 1403 (2) by payment funded as part of the Community Legal Service².

A contract with the Legal Aid Commission³ may provide for remuneration to be assessed by the court⁴.

Under the Civil Procedure Rules 1998 (which replaced the former rules relating to the taxation of costs)⁵ the court may make a 'summary assessment' of costs or a 'detailed assessment'⁶. A summary assessment is the procedure by which the court, when making an order about costs, orders payment of a sum of money instead of fixed costs or detailed assessment⁷. A detailed assessment is the procedure by which the amount of costs is decided by a costs officer under the relevant provisions⁸.

Provisions are also made for the assessment of costs under the Criminal Procedure Rules 2005⁹.

The certificate of the costs officer by whom any bill has been assessed must, unless it is set aside or altered by the court, be final as to the amount of the costs covered by it, and the court may make such order in relation to the certificate as it thinks fit, including, in a case where the retainer is not disputed, an order that judgment be entered for the sum certified to be due with costs¹⁰.

On every assessment of costs¹¹ in respect of any contentious business the costs officer may, in determining the remuneration of the solicitor, have regard to the skill, labour and responsibility involved in the business done by him¹².

1 As to remuneration generally see PARA 931 et seq.

2 See **LEGAL AID** vol 65 (2008) PARA 41 et seq. As to the Community Legal Services see **LEGAL AID** vol 65 (2008) PARA 31 et seq.

3 As to the Legal Aid Commission see **LEGAL AID** vol 65 (2008) PARA 17 et seq.

4 See the Community Legal Service (Funding) Order 2007, SI 2007/2441, art 6; and **LEGAL AID** vol 65 (2008) PARA 74 et seq. If the court makes a costs order against a legally represented party and the party is not present when the order is made the party's solicitor must notify his client in writing of the costs order no later than seven days after the solicitor receives notice of the order: see CPR 44.2; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1745. As to the detailed assessment procedure where costs are payable out of the Community Legal Service Fund see CPR 47.17; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1794.

5 I.e. the rules contained in the Rules of the Supreme Court 1965 and the County Court Rules 1981; see **CIVIL PROCEDURE** vol 12 (2009) PARA 1734.

6 See **CIVIL PROCEDURE** vol 12 (2009) PARA 1734.

7 CPR 43.3. See further **CIVIL PROCEDURE** vol 12 (2009) PARA 1734.

8 CPR 43.4. The relevant provisions mentioned in the text are CPR Pt 47 (see **CIVIL PROCEDURE** vol 12 (2009) PARA 1779 et seq). For these purposes 'costs officer' means a costs judge, a district judge and an authorised court officer: CPR 43.2(1)(c). 'Authorised court officer' means any officer of a county court, a district registry, the Principal Registry of the Family Division or the Supreme Court Costs Office, whom the Lord Chancellor has authorised to assess costs: CPR 43.2(1)(d). Where a costs officer is in the course of assessing a bill of costs, he may request the costs officer of any other court to assist him in assessing any part of the bill, and the costs officer so requested must assess that part of the bill and must return the bill with his opinion on it to the costs officer making the request: Solicitors Act 1974 s 72(2). Where such a request is made the costs officer who is requested to assess part of a bill must have such powers, and may take such fees, in respect of that part of the bill, as he would have or be entitled to take if he were assessing that part of the bill in pursuance of an order of the court of which he is an officer; and the costs officer who made the request must not take any fee in respect of that part of the bill: s 72(3). The Solicitors Act 1974 s 72(2), (3) is prospectively amended by the Legal Services Act 2007 Sch 16 para 67(c), (d) which reflects the replacement of taxation of costs with assessment of costs and the replacement of the taxing officer with the costs officer. As to assessment of costs see PARA 967 et seq.

9 See CrimPR Pt 78 and 61.20.

10 Solicitors Act 1974 s 72(4). The Solicitors Act 1974 s 72(4) is prospectively amended by the Legal Services Act 2007 Sch 16 para 67(c), (d) which reflects the replacement of taxation of costs with assessment of costs and the replacement of the taxing officer with the costs officer.

11 This is subject to the provisions of any rules of court. The Solicitors Act 1974 s 66(b) is prospectively amended by the Legal Services Act 2007 Sch 16 para 62(b), (c) which reflects the replacement of taxation of costs with assessment of costs.

12 Solicitors Act 1974 s 66(b). As from a day to be appointed this also includes the business done by any employee of the solicitor who is an authorised person: see s 66(b) (prospectively amended by the Legal Services Act 2007 Sch 16 para 62(e)). At the date at which this volume states the law no such day had been appointed.

UPDATE

967 Scrutiny of a solicitor's remuneration

NOTE 8--CPR 43.2(1)(d) amended: SI 2009/2092.

NOTE 9--CrimPR Pt 78 and 61.20 now Criminal Procedure Rules 2010, SI 2010/60, Pt 76 and r 61.20.

NOTES 10, 11--Amendments made by Legal Services Act 2007 Sch 16 paras 62(b), (c), 67(c), (d) in force 1 January 2010: SI 2009/3250.

NOTE 12--Day appointed is 31 March 2009: SI 2009/503.

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B. JURISDICTION

968. Jurisdiction of the Supreme Court.

The power of the Supreme Court to order assessment¹ of a solicitor's bill of costs² rests firstly on its original or inherent jurisdiction over its officers³, secondly on the jurisdiction under the Solicitors Act 1974 and thirdly on the jurisdiction of the court in dealing with contested claims⁴.

Where the statutory jurisdiction is inapplicable, as where the solicitor has obtained judgment on the bill and there are no special circumstances⁵, or more than 12 months have elapsed since delivery of a bill and there are no special circumstances, the court will only exercise its inherent jurisdiction to avoid a clear injustice⁶ but in any event the inherent jurisdiction of the court is curtailed by statute at least so far as it is negative in content⁷.

1 The power to order delivery of a bill and the power to order assessment of a bill are distinct (see the Solicitors Act 1974 ss 68, 70) but submitting to an order to deliver a bill may by conduct involve the solicitor in submitting also to an order for assessment (see *Re Palace Restaurants Ltd* [1914] 1 Ch 492, CA). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed. Every application for an order for the assessment of a solicitor's bill or for the delivery of a solicitor's bill and for the delivery up by a solicitor of any documents in his possession, custody or power must be made in the matter of that solicitor: Solicitors Act 1974 s 72(1). The Solicitors Act 1974 s 72(1) is prospectively amended by the Legal Services Act 2007 Sch 16 para 67 which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

2 As to the meaning of 'costs' see PARA 835 note 6.

3 The inherent jurisdiction of the court is preserved by the Solicitors Act 1974 s 50(2).

4 *Re Park, Cole v Park* (1888) 41 ChD 326 at 332 per Stirling J.

5 As to special circumstances see PARA 975 et seq.

6 *Symbol Park Lane Ltd v Steggles Palmer* [1985] 2 All ER 167, [1985] 1 WLR 668, CA; but cf *Harrison v Tew* [1990] 2 AC 523, [1990] 1 All ER 321, HL; and see note 7.

7 Thus the inherent power referred to in the Solicitors Act 1974 s 50 is subject to the provisions of s 70(4) (power to order assessment after the expiration of 12 months from payment of the bill is not exercisable). The inherent jurisdiction is therefore to that extent displaced by the statutory provisions: *Harrison v Tew* [1990] 2 AC 523, [1990] 1 All ER 321, HL.

UPDATE

968 Jurisdiction of the Supreme Court

NOTE 1--Day appointed is 1 October 2009: SI 2009/1604. Amendment made by Legal Services Act 2007 Sch 16 para 67 in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(vii) Assessment of Costs/B. JURISDICTION/969. Extent of statutory jurisdiction.

969. Extent of statutory jurisdiction.

The statutory jurisdiction of the court under the Solicitors Act 1974¹ extends over all bills relating to business transacted by a solicitor in his professional capacity² but not over bills relating to business transacted by him in any other capacity³. Where the solicitor acts in a professional capacity it is immaterial whether the bill relates to contentious or non-contentious business⁴ or as regards contentious business whether the business was civil or criminal⁵ or parliamentary⁶. Assessment may also be ordered of an agency bill between a country solicitor and his London agent⁷.

1 The court's jurisdiction under the Solicitors Act 1974 to order assessment extends to the High Court and in appropriate cases to the county court: see s 61(6), and PARA 948 note 3; s 69(3), and PARA 970; s 73(1), and PARAS 1011, 1019; and s 74(1), and PARA 970. The jurisdiction arises under s 61(2)(b) (assessment as if contentious business agreement had never been made: see PARA 948), s 61(5) (re-opening of such an agreement: see PARA 952), s 63(2) (death, incapacity or change of solicitor on such an agreement: see PARA 950), s 69(1) (party chargeable about to quit England and Wales, go bankrupt etc: see PARA 956), s 70(1), (2) (assessment on application by party chargeable or solicitor: see PARA 971), s 71(1), (3) (assessment on application by third party: see PARA 973), and s 73(1)(b) (charging orders: see PARAS 1011, 1021).

2 *Re Ward, Allen v Aldridge* (1844) 5 Beav 401. It is immaterial that the work is done out of the jurisdiction: *Re Maugham (a solicitor)* (1885) 29 Sol Jo 576; affd 2 TLR 115, CA.

3 *Re Ward, Allen v Aldridge* (1844) 5 Beav 401; *Re Baker, Lees & Co* [1903] 1 KB 189, CA; and see *Bush v Martin* (1863) 2 H & C 311. It is otherwise if he adopts the character of a solicitor by delivering the bill in the usual form containing some items relating to work clearly done as a solicitor: *Re Jones* (1872) LR 13 Eq 336. Thus taxation (now assessment) was ordered where the bill related to a solicitor's charges as an election agent (*Re Osborne* (1858) 25 Beav 353, where on the facts the work required was of a legal nature and the relationship of solicitor and client subsisted; and see *Re Andrews* (1853) 17 Beav 510) but not as a canvassing agent (*Re Oliver* (1867) 36 LJ Ch 261; and see *Re Parker* (1882) 21 ChD 408, CA), or where it related to the fees for holding a court leet as a steward of a manor (*Luxmore v Lethbridge* (1822) 5 B & Ald 898) even though the ordinary fees as steward of the manor were not taxable (*Re Ward, Allen v Aldridge* (1844) 5 Beav 401; and see *Re Corsellis, Lawton v Elwes* (1887) 34 ChD 675, CA; *Re Jennings (a solicitor)* [1903] 1 Ch 906).

4 *Re Barker* (1834) 6 Sim 476; *Re Rice* (1837) 2 Keen 181; *Re Lees* (1844) 5 Beav 410; *Re Bowen* (1872) 41 LJ Ch 327.

5 *Clarke v Donovan* (1794) 5 Term Rep 694; *Sylvester v Webster* (1832) 9 Bing 388; *Curling v Sedger* (1838) 4 Bing NC 743; *Billing v Coppock* (1847) 1 Exch 14 at 15; *Re Jones* [1895] 2 Ch 719; on appeal [1896] 1 Ch 222, CA.

6 *Allison v Herring* (1839) 9 Sim 583; *Re Sudlow and Kingdom* (1849) 11 Beav 400; *Re Strother* (1857) 3 K & J 518; and see *Re Baker, Lees & Co* [1903] 1 KB 189 at 195-196, CA; *Ex p Wheeler* (1814) 3 Ves & B 21.

7 *Smith v Dimes* (1849) 4 Exch 32; *Re Wilde (a solicitor)* [1910] 1 Ch 100. As to legal agents see PARA 1022 et seq.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(vii) Assessment of Costs/B. JURISDICTION/970. Jurisdiction of a county court.

970. Jurisdiction of a county court.

Where the amount of a solicitor's bill of costs¹ relating wholly or partly to contentious business² does not exceed £5,000, a county court in which any part of that business was done may exercise and perform the powers and duties of the High Court³ in respect of the assessment of the bill⁴. A county court also has a limited jurisdiction in respect of the assessment of a bill of costs where there has been a contentious business agreement⁵.

No person other than a legal representative⁶ or a person exercising a right of audience or a right to conduct litigation⁷ is entitled to have or recover any fee or reward for acting on behalf of the party in proceedings in a county court⁸. The remuneration of a solicitor in respect of contentious business done by him in a county court is regulated by the provisions of the Solicitors Act 1974⁹. The district judge of the county court is the costs officer¹⁰ and except in so far as rules of court may otherwise provide¹¹ the amount which may be allowed on the assessments of any costs or bill of costs in respect of any item relating to county court proceedings may not exceed the amount which could have been allowed in respect of that item *inter partes* in those proceedings having regard to the amount of the claim and of any counterclaim¹².

1 As to the meaning of 'costs' see PARA 835 note 6.

2 As to the meaning of 'contentious business' see PARA 933 note 2.

3 *Ie* under the Solicitors Act 1974 ss 69-71: see PARAS 956, 971 *et seq.*

4 Solicitors Act 1974 s 69(3) (amended by SI 1991/724). A claim for an order under the Solicitors Act 1974 Pt 3 for the assessment of costs payable to a solicitor by his client which relates to contentious business done in a county court and is within the financial limit of the county court's jurisdiction specified in s 69(3) may be made in that county court and in every other case must be made to the High Court: CPR 67.3(1). As to the procedure for any county court to transfer the proceedings to another county court for detailed assessment of costs see CPR 30.2; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1782.

5 See the Solicitors Act 1974 s 61(6); and PARA 948 note 3. As to contentious business agreements see PARA 945; and as to the meaning of 'contentious business' see PARA 933 note 2.

6 For these purposes, 'legal representative' means an authorised advocate or authorised litigator, as defined by the Courts and Legal Services Act 1990 s 119(1) (see PARAS 497 note 7, 498 note 6 respectively): County Courts Act 1984 s 147(1) (definition added by the Courts and Legal Services Act 1990 Sch 18 para 49(1)). As from a day to be appointed this definition is amended by the Legal Services Act 2007 Sch 21 para 61 and 'legal representative' means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act). At the date at which this volume states the law no such day had been appointed.

7 *Ie* by virtue of an order made under the Courts and Legal Services Act 1990 s 11 (representation in county courts): see **COURTS** vol 10 (Reissue) PARA 706. See also PARA 589.

8 County Courts Act 1984 s 143(1) (substituted by the Courts and Legal Services Act 1990 Sch 18 para 48).

9 *Ie* the Solicitors Act 1974 Pt III (ss 59-73): Solicitors Act 1974 s 74(1).

10 Solicitors Act 1974 s 74(2). Any assessment of costs by the district judge may be reviewed by a judge assigned to the county court district or by a judge acting as a judge so assigned on the application of any party to the assessment: Solicitors Act 1974 s 74(2). The Solicitors Act 1974 s 74(2) is prospectively amended by the Legal Services Act 2007 Sch 16 para 69 which reflects the replacement of taxation of costs with assessment of

costs, the replacement of a taxing officer with a costs officer and the replacement of a registrar with a district judge. As to assessment of costs see PARA 967 et seq.

11 le see the CPR 48.8 whereby the Solicitors Act 1974 s 74(3) applies unless the solicitor and the client have entered into a written agreement which expressly permits payment to the solicitor of an amount greater than that which the client could have recovered from another party to the proceedings: CPR 48.8(1A). This rule does not apply to a bill which is to be paid out of the Community Legal Services Fund (see **LEGAL AID**): see CPR 48.8(1).

12 Solicitors Act 1974 s 74(3).

UPDATE

970 Jurisdiction of a county court

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 6--Day appointed is 1 January 2010: SI 2009/3250.

NOTE 10--Amendment made by Legal Services Act 2007 Sch 16 para 69 in force 1 January 2010: SI 2009/3250.

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C. RIGHT TO ORDER FOR ASSESSMENT

971. Persons entitled to assessment.

Assessment of a solicitor's bill to his own client¹ under the Solicitors Act 1974² may be ordered³, subject to various conditions being met, on the application of the party chargeable⁴, the solicitor⁵ or a third party⁶.

If the party chargeable⁷ with a solicitor's bill makes an application to the High Court before the expiration of one month from the delivery of the bill, the court must order that the bill be assessed⁸, without requiring any sum to be paid into court⁹, and that no action be commenced on the bill until the assessment is completed¹⁰.

If no application is made within one month¹¹ then on an application being made by the solicitor¹² or the party chargeable with the bill¹³, the court may on such terms as it thinks fit¹⁴ order that the bill be assessed and that no action be commenced on the bill, and that any action already commenced be stayed until the assessment is completed¹⁵.

Where a person other than the party chargeable with the bill¹⁶ has paid, or is or was liable to pay a bill either to the solicitor or to the party chargeable, that person¹⁷ may apply to the High Court for an order for assessment of the bill as if he were the party chargeable with it and the court may make the same order as if that had been the case¹⁸.

1 As to the meaning of 'costs' see PARA 835 note 6. For guidance on when a bill is a 'solicitor's bill' for the purposes of the Solicitors Act 1974 see *Pine v Law Society* [2002] EWCA Civ 175, [2002] 2 All ER 658, [2002] 1 WLR 2189.

2 Ie under the Solicitors Act 1974 ss 70-71: see PARA 972 et seq.

3 As to jurisdiction see PARA 969.

4 Ie usually the client. The client may have a right to assessment even though the agreement is to charge only out of pocket expenses: *Re Ransom* (1854) 18 Beav 220; and see *Re Philp* (1860) 2 Giff 35; and PARA 931. If the solicitor is a trustee and he or his firm acts in trust matters, a co-trustee is entitled as party chargeable to taxation (now assessment) of a bill rendered by the solicitor-trustee or his firm: *Re HP Davies & Son* [1917] 1 Ch 216.

5 A solicitor has no right to insist that his bill be assessed under the Solicitors Act 1974 or not at all, eg when the amount payable can be ascertained in bankruptcy or on a liquidation: *Re Palace Restaurants Ltd* [1914] 1 Ch 492, CA; *Re Woods, ex p Ditton* (1880) 13 ChD 318, CA. Examination by the proper officer on behalf of a local authority does not preclude the solicitor from applying for taxation (now assessment): *Re Blake and Croydon Rural Sanitary Authority* (1886) 2 TLR 336; *Southampton Guardians v Bell and Tayler* (1888) 21 QBD 297, DC.

6 Ie any person who has paid the bill or is or was liable to pay it either to the solicitor or to the party chargeable or the personal representatives or assignees of any such person: see the Solicitors Act 1974 s 71(1); and PARA 966. A trustee in bankruptcy may apply as an assignee: *Re Allingham* (1886) 32 ChD 36, CA. This provision deals only with taxation (now assessment) as between a solicitor and own client, not inter partes: *Re Morris* (1872) 27 LT 554; *Re Grundy, Kershaw & Co* (1881) 17 ChD 108; *Re Cowdell* (1883) 52 LJ Ch 246.

Persons liable to pay include a purchaser (*Re Morecroft* (1885) 29 Sol Jo 471, CA), a lessee who has agreed in writing to pay the lessor's costs (see the Costs of Leases Act 1958 s 1; *Re Negus* [1895] 1 Ch 73; *Re Gray* [1901] 1 Ch 239), a mortgagor (*Painter v Lindsell* (1840) 8 Scott 453; *Re Lees* (1844) 5 Beav 410; *Re Thomas* (1844) 8 Beav 145; *Re Longbotham & Sons* [1904] 2 Ch 152, CA) or his trustee in bankruptcy (*Re Allingham*

(1886) 32 ChD 36, CA), or a subsequent incumbrancer (*Re Taylor* (1854) 18 Beav 165; *Re Jessop* (1863) 32 Beav 406; and as to the liability of the next friend of a minor for costs see also **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1429) as regards a vendor's, lessor's or mortgagee's costs. Also liable to pay may be a person obliged to sue in the name of another as regards the nominal claimant's costs (*Re Masters* (1835) 4 Dowl 18); any party to a compromise, as regards costs which he has agreed to pay as between solicitor and own client (*Balme v Paver* (1821) Jac 305; *Vincent v Venner* (1833) 1 My & K 212; *Sadler v Palfreyman* (1834) 1 Ad & El 717; *Re Hartley* (1861) 30 Beav 620; *Re Cohen and Cohen* [1905] 2 Ch 137, CA; *Hirst and Capes v Fox* [1908] AC 416, HL; see also *Re Hulbert and Crowe* (1894) 71 LT 748); and generally any person who is legally liable to pay the bill as such (*Sadler v Palfreyman* (agreement to pay costs); *Re Shrewsbury and Leicester Rly Co, Re Vardy* (1851) 20 LJ Ch 325 (liquidator); *Re Mills* (1885) 79 LT Jo 162, DC (supplying funds for convict's defence)). Assessment will not be ordered on the application of a ratepayer, where the bill is payable out of the rates (see *Re Barber, ex p Manchester and Leeds Rly Co* (1845) 14 M & W 720), or of a person who has voluntarily paid the bill (*Langford v Nott* (1820) 1 Jac & W 291; *Re Becke and Flower* (1844) 5 Beav 406). A person who has agreed to pay a fixed sum for costs cannot obtain assessment (*Re Morris* (1872) 27 LT 554; *Ingrams v Sykes* [1987] NLJ Rep 1135, CA), nor where there has been no delivery of any bill and therefore no payment within the Solicitors Act 1974 and no written agreement (*Re Heritage, ex p Docker* (1878) 3 QBD 726).

7 If the solicitor is retained to act on behalf of several persons in the same matter and the retainer is separate, each is entitled to have the whole bill assessed, even though only liable for a portion of the whole amount: *Re Salaman* [1894] 2 Ch 201, CA; *Re Colquhoun, ex p Ford* (1854) 5 De GM & G 35; see also *Re Allen, Davies v Chatwood* (1879) 11 ChD 244. Where the retainer is joint, all should, if possible concur; but the court will make the order on the application of one of the persons chargeable if the other refuses or by his absence is unable to join: *Re Lewin* (1853) 16 Beav 608; *Re Ilderton* (1863) 33 Beav 201; see also *Margerum v Sandiford* (1791) 3 Bro CC 233; *Re Schelingser, ex p Watts* (1836) 1 Deac 588; *Re Chilcote* (1839) 1 Beav 421; *Lockhart v Hardy* (1841) 4 Beav 224; *Re Hair* (1847) 10 Beav 187 (solicitor obtained judgment against one partner but others allowed to obtain an order for taxation (now assessment)); *Re Dawson and Bryan* (1860) 28 Beav 605. To avoid a multiplicity of assessment, the court as far as possible directs a single assessment in the presence of all persons interested: see *Re Salaman*.

8 *Re Brockman* [1909] 2 Ch 170 at 174, CA. The solicitor has no right to an order for assessment until after one month has expired from the date of delivering the bill, except that he may apply in particular circumstances under the Solicitors Act 1974 s 69(1) for leave to commence an action within that period, and the court has power on that application to order the bill to be assessed: see PARA 956.

9 As to the court's discretion to add an order for the delivery of papers see *Ex p Jarman* (1877) 4 ChD 835.

10 Solicitors Act 1974 s 70(1); and see *Re Plummer* [1917] 2 Ch 432, where it was alleged that the client was using this privilege to delay matters; the court ordered the client to proceed within 14 days or the order to tax would be discharged. The Solicitors Act 1974 s 70(1) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65(b) which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

11 Ie under the Solicitors Act 1974 s 70(1).

12 For these purposes, 'solicitor' includes a solicitor's personal representative, trustee in bankruptcy or assignee: see the Solicitors Act 1974 s 68(3). If the solicitor dies during the taxation (now assessment), the proceedings may be revived on the application of the client (*Re Nicholson* (1861) 29 Beav 665) or of the solicitor's personal representative (*Re Waugh* (1859) 29 Beav 666).

13 Where the application is made by the party chargeable with the bill:

334 (1) after the expiration of 12 months from delivery of the bill; or

335 (2) after judgment has been obtained for the recovery of the costs covered by the bill; or

336 (3) after the bill has been paid but before the expiration of 12 months from the payment of the bill,

no order will be made except in special circumstances (see PARA 974) and if an order is made it may contain such terms as regards the costs of the assessment as the court may think fit: Solicitors Act 1974 s 70(3).

The power to order assessment is not exercisable on an application made by the party chargeable with the bill after the expiration of 12 months from the payment of the bill: s 70(4). The Solicitors Act 1974 s 70(3), (4) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65(d) which reflects the replacement of taxation of costs with assessment of costs.

14 Ie not being terms as to the costs of assessment: Solicitors Act 1974 s 70(2).

15 Solicitors Act 1974 s 70(2). The Solicitors Act 1974 s 70(2) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65(c) which reflects the replacement of taxation of costs with assessment of costs.

16 le for the purposes of the Solicitors Act 1974 s 70.

17 le or his executors, administrators or assignees: Solicitors Act 1974 s 71(1).

18 Solicitors Act 1974 s 71(1); and see further PARA 966.

UPDATE

971 Persons entitled to assessment

NOTES 13, 15--Amendments made by Legal Services Act 2007 Sch 16 para 65(c), (d) in force 1 January 2010: SI 2010/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(vii) Assessment of Costs/C. RIGHT TO ORDER FOR ASSESSMENT/972. The costs to be assessed.

972. The costs to be assessed.

An order for the assessment of a bill of costs made on an application by the party chargeable with the bill may, if he so requests, be an order for the assessment of the profit costs¹ covered by the bill². The court may otherwise order the assessment of all the costs, or of the profit costs, or of the costs other than profit costs, and, where part of the costs is not to be assessed, may allow an action to be commenced or continued for that part of the costs³.

1 'Profit costs' means costs other than counsel's fees or costs paid or payable in the discharge of a liability incurred by the solicitor on behalf of the party chargeable: Solicitors Act 1974 s 70(12). As to the meaning of 'costs' see PARA 835 note 6.

2 Solicitors Act 1974 s 70(5). The Solicitors Act 1974 s 70(5) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65(d) which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

3 Solicitors Act 1974 s 70(6). The Solicitors Act 1974 s 70(6) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65(e) which reflects the replacement of taxation of costs with assessment of costs.

UPDATE

972 The costs to be assessed

NOTES 2, 3--Amendments made by Legal Services Act 2007 Sch 16 para 65(d), (e) in force 1 January 2010: SI 2010/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(vii) Assessment of Costs/C. RIGHT TO ORDER FOR ASSESSMENT/973. Application by third parties and persons interested.

973. Application by third parties and persons interested.

If the applicant is a third party or a person interested¹, the right to obtain an assessment is similar to that of the party chargeable², except that:

- 1404 (1) no order will be made for the assessment of a bill of costs which has already been assessed unless there are special circumstances³;
- 1405 (2) where a third party is the applicant the court may take into account special circumstances affecting him but not affecting the party chargeable⁴; and
- 1406 (3) where a person interested is the applicant the court must have regard to the extent and nature of his interest⁵.

In any such case if assessment of the bill is ordered the court may order a copy of the bill to be delivered to the applicant upon his paying for the costs of that copy⁶.

Where a trustee or personal representative has become liable to pay the bill of a solicitor, any person interested in the property out of which the trustee or representative has paid or is entitled to pay the bill may apply to the court which may order that the bill be assessed on such terms, if any, as it thinks fit; and that such payments in respect of the amount found to be due to or by a solicitor and in respect of the costs of the assessment be made to or by the applicant, to or by the solicitor, or to or by the executor, administrator or trustee, as it thinks fit⁷. This provision enables a creditor to apply for the assessment of an executor's bill paid out of the deceased debtor's estate⁸, but a trustee in bankruptcy is not a 'trustee' within this provision so as to enable the bankrupt to apply for assessment⁹. An applicant who has paid money to the solicitor has the same right to be paid by the trustee or personal representative chargeable with the bill as the solicitor had¹⁰.

1 As to third parties and persons interested see PARA 971.

2 See the Solicitors Act 1974 s 71(1), (3); and *Re Downes* (1844) 5 Beav 425 at 428; *Re Carew* (1844) 8 Beav 150; *Re Shrewsbury and Leicester Rly Co, Re Vardy* (1851) 20 LJ Ch 325; *Re Dickson* (1856) 8 De GM & G 655; *Re Abbott* (1861) 4 LT 576; *Re Baker* (1863) 32 Beav 526; *Re Massey* (1865) 34 Beav 463.

3 Solicitors Act 1974 s 71(6). As to 'special circumstances' see PARA 975. The Solicitors Act 1974 s 71(6) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65(e) which reflects the replacement of taxation of costs with assessment of costs.

4 Solicitors Act 1974 s 71(2); *Re Longbotham and Sons* [1904] 2 Ch 152 at 156-157, CA.

5 Solicitors Act 1974 s 71(4)(b). If the applicant is entitled to the order for taxation (now assessment) by virtue of an agreement the existence or terms of which are disputed, it seems proper that the agreement should be established by proceedings before the court rather than the taxing master: *Re Hirst and Capes* [1908] 1 KB 982 at 994, CA; affd sub nom *Hirst and Capes v Fox* [1908] AC 416, HL.

6 Solicitors Act 1974 s 71(7); *Re Blackmore* (1851) 13 Beav 154.

7 Solicitors Act 1974 s 71(3); *Re Hallett* (1855) 21 Beav 250; *Re Drake* (1856) 22 Beav 438. Except under the statute, beneficiaries cannot obtain assessment as against the solicitor: *Re Spencer, Spencer v Hart* (1881) 51 LJ Ch 271, CA; *Re Jackson, Re Cottrell, Boughton-Leigh v Boughton-Leigh* (1889) 40 ChD 495. In considering such an application the court must have regard to the provisions of the Solicitors Act 1974 s 70 as to applications by the party chargeable for the assessment of a solicitor's bill so far as they are capable of being

applied to an application made under s 71(3) and to the extent and nature of the interest of the applicant: s 71(4)(a), (b). The Solicitors Act 1974 s 71(3), (4) is prospectively amended by the Legal Services Act 2007 Sch 16 para 66(c), (d) which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

8 *Re Jones and Everett* [1904] 2 Ch 363.

9 *Re Leadbitter* (1878) 10 ChD 388, CA.

10 Solicitors Act 1974 s 71(5).

UPDATE

973 Application by third parties and persons interested

NOTES 3, 7--Amendments made by Legal Services Act 2007 Sch 16 para 66(c)-(e) in force 1 January 2010: SI 2010/3250.

NOTE 3--Reference to Legal Services Act 2007 Sch 16 para 65(e) should be to Sch 16 para 66(e).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(vii) Assessment of Costs/C. RIGHT TO ORDER FOR ASSESSMENT/974. When special circumstances must be shown.

974. When special circumstances must be shown.

In certain instances the party chargeable is not entitled to an order to assess the bill of costs¹ without showing 'special circumstances'². Orders for assessment under the Solicitors Act 1974³ may not be made except in special circumstances on applications made after:

- 1407 (1) 12 months have expired⁴ from the delivery of the bill⁵ or, if the bill is being delivered in parts⁶, from the delivery of the last part⁷;
- 1408 (2) a judgment has been obtained for recovery of costs covered by the bill⁸; or
- 1409 (3) the bill has been paid⁹ but 12 months have not elapsed since payment was made¹⁰.

1 As to the meaning of 'costs' see PARA 835 note 6.

2 The fact that a bill has been delivered some while ago and has not been objected to is evidence that the charges in it are reasonable: *Re Park, Cole v Park* (1888) 41 ChD 326 at 333; affd (1889) 41 ChD 336 at 338, CA. Paying a bill is an admission that its amount is reasonable: *Re Harding* (1847) 10 Beav 250 at 252. It was the intention of the statute that a judgment should not be a bar to an application for taxation (now assessment) where the judgment did not involve any inquiry into the amount of the debt before costs: *Re Gedye* (1852) 15 Beav 254 at 259. These judicial statements show reasons for the three instances in which a party chargeable is required to prove special circumstances: see PARA 975.

3 The court may investigate particular charges, or the charges as a whole, either after judgment (*Lumsden v Shipcote Land Co* [1906] 2 KB 433, CA) or after the 12 months from delivery have expired (*Jones & Son v Whitehouse* [1918] 2 KB 61, CA) by referring the matter to a costs officer under the court's inherent jurisdiction but without requiring proof of such 'special circumstances' as would comply with the requirements of the statute.

4 *Re Wilton* (1843) 13 LJB 17; *Re Harper* (1847) 10 Beav 284; *Cowdell v Neale* (1856) 1 CBNS 332; and see PARA 981. In the liquidation of a company special circumstances need not be shown unless the 12 months have elapsed before the date of the commencement of the liquidation: *Re Foss, Bilborough, Plaskitt and Foss* [1912] 2 Ch 161; and see *Re Marseilles Extension Rly and Land Co, ex p Evans* (1870) LR 11 Eq 151. Either in a compulsory or in a voluntary liquidation the bill should not be taxed under the Solicitors Act 1974 but under the inherent jurisdiction of the court, the cost being added to the debt: see *Re Foss, Bilborough, Plaskitt and Foss*; *Re Palace Restaurants Ltd* [1914] 1 Ch 492 at 501, CA (in the light of the decision in *Harrison v Tew* [1990] 2 AC 523, [1990] 1 All ER 321, HL, this decision may now be doubtful: see PARA 968). In relation to the payment of costs out of the fund paid into court the 12 months may be taken as those expiring at the date of payment in: *De Bay v Griffin* (1857) 10 Ch App 291.

5 Solicitors Act 1974 s 70(3)(a); and see *Re A Solicitor* [1961] Ch 491 at 503; and PARA 981.

6 See PARA 961. The distinction is between the delivery of one entire bill in several portions, together making the whole, and the delivery of separate bills, each a distinct entity, in relation to separate stages of a matter proceeding in separate stages.

7 *Re Cartwright* (1873) LR 16 Eq 469; *Re Nelson, Son and Hastings* (1885) 30 ChD 1, CA (London agent and country solicitor); *Re Romer and Haslam* [1893] 2 QB 286, CA. See also *Re James, ex p Quilter* (1850) 4 De G & Sm 183; *Re Nicholson* (1861) 3 De GF & J 93.

8 Solicitors Act 1974 s 70(3)(b); and see *Langstaffe v Taylor* (1807) 14 Ves 262. See also *Re Whicher, Whicher v Thomas* (1844) 13 M & W 549; *Re Hair* (1847) 10 Beav 187 (where judgment had been obtained against one of three partners); *Re Barnard, ex p Wetherell* (1852) 2 De G M & G 359; *Re Gedye* (1852) 15 Beav 254. See also PARA 976.

9 *Re Harding* (1847) 10 Beav 250; *Re Dawson and Bryan* (1860) 28 Beav 605 (application by a person interested). See also *Forsinard Estates Ltd v Dykes* [1971] 1 All ER 1018, [1971] 1 WLR 232 (payment by deduction with the consent of the client from money held on behalf of that client); and PARA 978. Application should be made promptly: *Re Massey* (1909) 101 LT 517.

10 Solicitors Act 1974 s 70(3)(c); *Re A Solicitor* [1961] Ch 491, [1961] 2 All ER 321.

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975. What constitutes special circumstances.

In determining whether in any particular case there are such special circumstances as justify the making of an order for the assessment of costs¹ the court has a discretion² with which an appellate court will not lightly interfere³. This principle applies whether the bill of costs has been delivered for 12 months or has been paid⁴, but delay in applying for an order to assess may perhaps be explained more easily than the admission of reasonableness in amount which is implicit in the act of paying⁵, so that stronger evidence may be required to obtain an order to assess after the bill has been paid than after it has been delivered for 12 months⁶. In either such case, however, if it can be shown that the bill actually delivered was not in law a sufficient bill, an order for delivery of a proper bill and assessment may be obtained in the absence of special circumstances⁷, or where there has not been a delivery of a bill within the meaning of the Solicitors Act 1974⁸. The modern rule is as stated but older cases may usefully be referred to. These cases establish a guiding rule⁹ that after payment, 'gross overcharge' often called 'overcharge amounting to fraud'¹⁰ or 'pressure' together with excessive charges¹¹ must be proved in order to entitle the applicant to an order for assessing the bill¹². Upon an application after 12 months have elapsed since delivery, an unusual charge of large amount, requiring explanation to justify it, was sufficient ground for making the order to assess¹³ although gross overcharges should be shown¹⁴. It is expedient therefore to consider 'special circumstances' in relation to the three statutory cases¹⁵ where a party chargeable has to undertake the burden of establishing their existence¹⁶.

1 As to the meaning of 'costs' see PARA 835 note 6.

2 *Re Dearden* (1853) 9 Exch 210 at 215; *Re Boycott* (1885) 29 ChD 571, CA; *Re Norman* (1886) 16 QBD 673, CA; *Re Cheesman* [1891] 2 Ch 289, CA; *Re Hirst and Capes* [1908] 1 KB 982 at 990, 996, CA.

3 *Re Cheesman* [1891] 2 Ch 289 at 293, CA; *Re Hirst and Capes* [1908] 1 KB 982 at 990, 996, CA. See also *Gane and Kilner v Linley* (1909) 53 Sol Jo 198, CA.

4 See eg *Re Norman* (1886) 16 QBD 673, CA (application after 12 months from delivery); *Re Hirst & Capes* [1908] 1 KB 982 at 990, 996, CA (application after payment); *Sanders v Isaacs* [1971] 1 All ER 755, [1971] 1 WLR 240 (application after payment with reservation of right to taxation (now assessment)). The principle referred to in the text must logically apply also to every other case in which an applicant has to show special circumstances.

5 See PARA 974 note 2. See also *Re Norman* (1886) 16 QBD 673, CA.

6 *Horlock v Smith* (1837) 2 My & Cr 495 at 510; *Re Barrow* (1853) 17 Beav 547; and see *Binns v Hey* (1843) 1 Dowl 661 at 667.

7 *Re Pomeroy and Tanner Solicitors* [1897] 1 Ch 284; *Re Pomeroy and Tanner (No 2)* (1897) 76 LT 149; and see PARA 959. In *Re Bagshaw, ex p Huddersfield and Manchester Railway and Canal Co* (1848) 2 De G & Sm 205, the omission of an agent's costs from a bill was treated as a special circumstance justifying taxation (now assessment) after 12 months, but in this case the existence of the agency and therefore the question of omission was disputed. As to legal agents see generally PARA 1022 et seq.

8 As to what constitutes payment see PARA 979.

9 However these cases are authorities for the general rule only: *Re Boycott* (1885) 29 ChD 571 at 581, CA; and see *Re G* (1909) 53 Sol Jo 469, where taxation (now assessment) was directed after payment although the charges were made by scale by mistake.

10 In fact no moral stigma was intended by this description for the charges might have been made in all honesty: *Re Strother* (1857) 3 K & J 518 at 525. It is therefore desirable to avoid using the word 'fraud'; in this connection 'gross overcharge' is preferable.

11 'Pressure' without overcharging is not sufficient since a person cannot properly complain of pressure unless it compels him to pay more than he ought to have paid: *Re Boycott* (1885) 29 ChD 571 at 581, CA.

12 *Re Hubbard* (1852) 15 Beav 251; *Re Boycott* (1885) 29 ChD 571 at 581, CA; and see *Re Lacey & Son* (1883) 25 ChD 301 at 309, CA.

13 *Re St Pierre v Hook* (1861) 3 Giff 372; *Re Robinson* (1867) LR 3 Exch 4, cited with approval in *Re Norman* (1886) 16 QBD 673, CA; and see *Binns v Hey* (1843) 1 Dowl 661 at 667-668.

14 See eg *Re Strother* (1857) 3 K & J 518 at 527-528; *Re Harle* (1868) 19 LT 305.

15 See PARA 974.

16 See eg *Re Towle* (1860) 30 Beav 170 (after payment).

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976. Special circumstances when 12 months have elapsed since delivery.

On applications when 12 months have elapsed since delivery, taxation (now assessment) has been directed in the following circumstances¹: when a charge for a non-existent scale fee had been included although work was not otherwise charged for²; where £85 was charged for witnesses who had been paid by the client and there was an unreasonable charge for shorthand notes taken by the solicitor's clerk³; where delivery of a bill long delayed was made on the evening of the client's departure abroad and contained a charge for 320 pages of abstract instead of 217⁴; where the country solicitor made an unreasonable charge for attendance in London during 31 days in relation to a country action tried in London⁵; where 100 guineas was charged for journeys for which the proper charge probably would be 61 guineas less and payment was not asked until 12 months had elapsed and the misrepresentation was made to justify the charges⁶.

On the other hand the following circumstances have been considered insufficient: the fact that the relationship of solicitor and client continued during the 12 months⁷; the fact that an action has been commenced after 12 months on the bill and is pending⁸; the presence of mistakes in a bill delivered to a client who was a solicitor and the husband of the substantive claimant and shared in the mistakes⁹; the presence of charges for letters which would not be allowed but amounted to £25 in a total of £1,200 charged by two bills delivered three-and-a half and one-and-a half years previously, respectively¹⁰; the fact that solicitors have not told their clients, who were executors, that in future administration proceedings some part of the costs might be disallowed¹¹.

1 See also *Harris v Yarm* [1960] Ch 256, [1959] 3 All ER 618.

2 *Re Pybus* (1887) 35 ChD 568 (treated as a case under this condition rather than after payment).

3 *Re Norman* (1886) 16 QBD 673, CA.

4 *Re Williams* (1852) 15 Beav 417.

5 *Re Robinson* (1867) LR 3 Exch 4.

6 *Re Strother* (1857) 3 K & J 518.

7 *Re Elmslie & Co, ex p Tower Subway Co* (1873) LR 16 Eq 326. See also *Sayer v Wagstaff* (1844) 4 LTOS 169.

8 *Bennett v Hill* (1853) 21 LTOS 101; *Cowdell v Neale* (1856) 1 CBNS 332; and see *Re Wilton* (1843) 13 LJQB 17.

9 *Re Gedye* (1851) 14 Beav 56.

10 *Re Harle* (1868) 19 LT 305.

11 *Re Layton, Steele & Co* [1890] WN 112; and see *Ex p Dickson* (1856) 8 De GM & G 655 at 661.

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977. Special circumstances when a judgment has been obtained.

On an application for taxation (now assessment) after a judgment has been obtained, the special circumstances shown should be a new matter come to the applicant's knowledge after judgment and he should be diligent in applying¹. Excessive charges alone have been held to be insufficient² but taxation (now assessment) has been directed at the instance of two partners where the solicitor has been employed by the firm and had collusively obtained judgment against the only other partner³.

1 *Re Whicher, Whicher v Thomas* (1844) 13 M & W 549 at 551; and see *Re Barnard, ex p Wetherell* (1852) 2 De GM & G 359.

2 *Re Shrewsbury and Leicester Rly Co, Re Vardy* (1851) 20 LJ Ch 325.

3 *Re Hair* (1847) 10 Beav 187.

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978. Special circumstances after payment.

Upon an application after payment the following circumstances have been held sufficient to entitle the applicant to an order for taxation (now assessment) of the bill of costs¹: where, at the time of paying, the client expressly stipulated that he should afterwards have the right to taxation (now assessment)²; where an over-payment is extracted by pressure³ as where on the evening of completing a transaction (often a loan) important to the client a bill is delivered and payment, substantially in full before completion, is required and made, although the client has no sufficient time in which to examine the bill and protest against the charges⁴; where the payment is made to save possession being taken by the solicitor under a bill of sale⁵; where overcharges are required to be paid before papers are handed over⁶; where the bill contains gross overcharges as where a considerable part of the bill was for business needlessly done⁷, or where a charge was made for 165 unnecessary letters⁸, or charges were made on the higher scale and the lower scale applied⁹; or where the bill contained charges which no solicitor dealing properly with his own client would have made¹⁰.

On the other hand the payment of a bill under protest is not of itself sufficient special circumstance to entitle the applicant to taxation (now assessment)¹¹, although reservation of the right is an important factor¹²; nor is pressure easily proved to have been exerted where the applicant himself was urging speedy completion¹³; nor is it established by the mere fact that the applicant had no sufficient opportunity to examine the bill¹⁴, while the fact that he had reasonable time for considering the bill negatives pressure unless actual influence or compulsion is proved¹⁵; nor are gross overcharges proved to exist unless the overcharges are substantial¹⁶; nor is an error in casting alone sufficient¹⁷, nor the fact that certain disbursements have not been actually paid before the bill was paid¹⁸. Moreover the inclusion by mistake of a scale fee where the applicant was separately advised is not of itself a special circumstance justifying taxation (now assessment)¹⁹, nor probably a dispute concerning liability to pay at all²⁰. Delay in applying may be a bar²¹.

The position is entirely different and taxation (now assessment) will be directed at the instance of a solicitor as a matter of course if required in relation to the investigation of a criminal charge²².

1 As to the meaning of 'costs' see PARA 835 note 6.

2 *Re Williams, ex p Love* (1891) 65 LT 68; *Re Leggatts and Carruthers* (1908) 53 Sol Jo 84; *Re Solicitors* (1934) 50 TLR 327. See also *Clutton v Pardon* (1823) Turn & R 301 at 303-304; *Horlock v Smith* (1837) 2 My & Cr 495 at 517; *Sanders v Isaacs* [1971] 1 All ER 755, [1971] 1 WLR 240.

3 Before sending a paid bill the court will take into account the circumstances of the payment, the state of mind of the client when he paid and the size of the overcharges. Broadly speaking, the more pressure or protest there was at the time of payment the smaller the overcharges need to be to justify an order to tax, while, conversely, the less pressure or protest there was the larger the overcharges might be: *Re A Solicitor* [1961] Ch 491 at 504, [1961] 2 All ER 321 at 328.

4 *Re Tryon* (1844) 7 Beav 496; *Re Pugh, ex p Briscoe* (1863) 1 De GJ & Sm 673; *Re Cheeseman* [1891] 2 Ch 289, CA (cases of completing purchases); *Re Sladden* (1847) 10 Beav 488 (payment to prevent sale by mortgagee); *Re Jones* (1845) 8 Beav 479; *Re Elmslie* (1850) 12 Beav 538 (cases of loans); *Re Wells* (1845) 8 Beav 416; *Re Phillpotts* (1853) 18 Beav 84; *Re Rance* (1856) 22 Beav 177 (cases of transfers of mortgages); *Re Newman* (1867) 2 Ch App 707 (lessor's costs); *Re REF (a solicitor)* (1908) 53 Sol Jo 83 (lessor's costs dispute where the scale or itemised charges were payable); *Ex p Andrews* (1844) 13 LJ Ch 222 (retirement of trustees).

- 5 *Re Foster, ex p Walker* (1860) 2 De GF & J 105.
- 6 *Re Lett* (1862) 31 Beav 488. See, however, *Re Jones* (1845) 8 Beav 479; *Re Munns and Longdon* (1884) 50 LT 356.
- 7 *Re Barrow* (1853) 17 Beav 547; and see *Re Pybus* (1887) 35 ChD 568 (charge of non-existent scale fee). See also PARA 976.
- 8 *Re Brady* (1867) 15 WR 632.
- 9 *Re Durnford* [1883] WN 29.
- 10 *Horlock v Smith* (1837) 2 My & Cr 495; and see *Ex p Dickson* (1856) 8 De GM & G 655 at 661.
- 11 *Re P and M* (1895) 39 Sol Jo 640; *Re Ward Bowie & Co* (1910) 102 LT 527; affd 102 LT 881, CA; *Re King* (1910) 74 JP 445. See also *Re Cheesman* [1891] 2 Ch 289, CA; and *Re Burchell Wilde & Co* (1902) 46 Sol Jo 570. It is not easy to distinguish payment under protest (ie payment in law coupled with a complaint in fact) from payment subject to the reservation of a right to assessment (see note 2). It may be argued that payment under protest is unconditional payment and payment subject to the reservation of a right to taxation (now assessment) is the acceptance of money offered subject to a condition so that the condition must be accepted or the money must be repaid: see *Re Thompson* (1885) 30 ChD 441 at 449, CA.
- 12 *Sanders v Isaacs* [1971] 1 All ER 755 at 760, [1971] 1 WLR 240 at 245-246.
- 13 *Re Boycott* (1885) 29 ChD 571, CA.
- 14 *Re Currie* (1846) 9 Beav 602; *Re Harrison* (1847) 10 Beav 57; *Re Drew* (1847) 10 Beav 368; *Re Abbott* (1854) 18 Beav 393. Nonetheless the lack of opportunity to examine the bill is a most material factor and is probably sufficient where the application is made without delay by a third person or a person interested: see PARA 973.
- 15 *Nokes v Warton* (1842) 5 Beav 448; and see *Re Welchman* (1848) 11 Beav 319; *Re Mash* (1851) 15 Beav 83; *Re Towle* (1860) 30 Beav 170; *Re Lacey & Son* (1883) 25 ChD 301 at 310, CA. If the solicitor has informed the client of the consequences of paying, taxation (now assessment) will not be directed: *Re Boyle, ex p Turner* (1854) 5 De GM & G 540.
- 16 *Massie v Drake* (1841) 4 Beav 433; *Re Lacey & Son* (1883) 25 ChD 301 at 310, CA; *Re Chowne* (1884) 52 LT 75, CA. Where the applicant is a person interested, the fact that the charges are open to criticism may suffice if he applies promptly: *Re N* (1912) 56 Sol Jo 520. A settled account is not to be re-opened for trifling errors: *Cooke v Setree* (1812) 1 Ves & B 126; *Cheese v Keen* [1908] 1 Ch 245. As to undue influence see *Watson v Rodwell* (1879) 11 ChD 150, CA.
- 17 *Re H* (1891) 36 Sol Jo 127.
- 18 *Re Wilton* (1843) 13 LJ QB 17; *Re Nelson, Son and Hastings* (1885) 30 ChD 1, CA; *Re Massey* (1909) 101 LT 517; and see PARA 959.
- 19 *Re Glascodine and Carlyle* (1885) 52 LT 781, CA; *Re Pybus* (1887) 35 ChD 568.
- 20 *Re Finch and Shephard, ex p Barton* (1853) 4 De GM & G 108.
- 21 *Re Bayley* (1854) 18 Beav 415; *Re Abbott* (1854) 18 Beav 393.
- 22 *Re Fisher & Co* (1879) 42 LT 261.

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979. What constitutes payment.

For the purposes of the Solicitors Act 1974, 'payment' means a payment of a sufficient bill of costs previously delivered¹. Subject to this, any act constituting payment of a debt for costs according to ordinary principles of law² will be payment within the statutory provision³. It is not, however, always absolutely essential that a bill should have been delivered before payment and an order for taxation (now assessment) may be refused where, after accounts have been settled, a bill is delivered and it is not shown that the bill contains overcharges⁴.

Apart from the questions whether a proper bill has been delivered or whether there is a binding agreement as to the amount of the costs, the following acts have been held to amount to payment within the statutory provision: where the solicitor, with the client's knowledge and assent, retained the amount of the bill out of the client's money in the solicitor's hands⁵; where the amount of the bill and of certain advances were included in a sum for which the client executed a mortgage in favour of the solicitor, even though no money actually passed between him and the client in respect of the costs⁶; where an account has been settled⁷; where a negotiable instrument is given in respect of the debt for costs and is paid, or by agreement is taken in payment of the costs, after an explanation to the client of the effect of this upon his right to tax (now assess) the bill⁸.

On the other hand the giving of a bill of exchange without more is not payment while the bill of exchange is outstanding or if it is dishonoured⁹, nor is the retention by the solicitor of money without the client's acquiescence¹⁰ or a settlement of accounts¹¹. If a bearer cheque is given to the firm's manager who is himself a solicitor, the burden of proving that it should be treated as having been paid to the firm is on the client alleging the payment¹².

1 *Re Street* (1870) LR 10 Eq 165; *Re Stogdon* (1887) 56 LJ Ch 420; *Re West, King and Adams, ex p Clough* (1892) 2 QB 102 at 106; *Re Baylis* [1896] 2 Ch 107, CA; *Re Callis* (1901) 49 WR 316; *Re Foster, Barnato v Foster* [1920] 3 KB 306 at 314, CA. An unsigned bill can be paid within the Solicitors Act 1974: *Re Simpson* [1878] WN 214; *Re Sutton and Elliott* (1883) 11 QBD 377, CA; *Re Griffith, Jones & Co* (1883) 53 LJ Ch 303, CA where a lump sum was paid in satisfaction of costs and other matters. As to the payment of costs by deduction in non-contentious cases see PARA 938.

2 See **CONTRACT** vol 9(1) (Reissue) PARA 942 et seq.

3 *Re Bischoff and Cox, ex p Hemming* (1856) 28 LTOS 144 per Willes J (cited in *Hitchcock v Stretton* [1892] 2 Ch 343 at 350); *Re Colyer* (1892) 37 Sol Jo 83; *Re Thompson, ex p Baylis* [1894] 1 QB 462 at 465, DC. Payment of a less sum on account does not suffice: *Re Woodard* (1869) 18 WR 37; *Re Angove* (1882) 26 Sol Jo 417, CA; but see *Re Duncan* (1845) 6 LTOS 82.

4 *Re Thompson, ex p Baylis* [1894] 1 QB 462 at 465, DC; *Re Bischoff and Cox, ex p Hemming* (1856) 28 LTOS 144; *Re Simmons and Politzer* [1954] 2 QB 296, CA. See also *Re Sealy* (1911) 45 ILT 1 (Ir CA); *Re Stogdon* (1887) 56 LJ Ch 420; *Re Callis* (1901) 49 WR 316. The client can waive delivery of a bill: see *Re Van Laun, ex p Pattullo* [1907] 1 KB 155 at 162; affd [1907] 2 KB 23, CA. It is probable that the waiver needs to be in writing so as to amount to an agreement of the costs: *Re West, King and Adams, ex p Clough* [1892] 2 QB 102 at 106; *Re Cawley and Whatley* (1870) 18 WR 1125; *Re Ellis and Ellis* (1908) 25 TLR 38.

5 *Re David* (1861) 30 Beav 278; *Re Thompson, ex p Baylis* [1894] 1 QB 462, DC; see also *Re Jackson* [1915] 1 KB 371 at 381, 383, DC; *Forsinard Estates Ltd v Dykes* [1971] 1 All ER 1018, [1971] 1 WLR 232; and as to payment by deduction in non-contentious cases see PARA 938.

6 *Re Boyle, ex p Turner* (1854) 5 De GM & G 540 at 543-544; and see *Re Van Laun, ex p Pattullo* [1907] 1 KB 155 at 159 per Bingham J. The mortgage should be drawn so as to constitute an agreement of the costs.

7 *Re Bischoff and Cox, ex p Hemming* (1856) 28 LTOS 144; *Hitchcock v Stretton* [1892] 2 Ch 343; *Turner v Willis* [1905] 1 KB 468, DC; *Re Van Laun, ex p Pattullo* [1907] 1 KB 155.

8 *Re Harries* (1844) 13 M & W 3; *Re Harper* (1847) 10 Beav 284; *Re Romer and Haslam* [1893] 2 QB 286 at 300, CA.

9 *Sayer v Wagstaff* (1844) 4 LTOS 169; *Re Peach* (1844) 2 Dow & L 33; *Re A Solicitor* (1894) 38 Sol Jo 239; *Ray v Newton* [1913] 1 KB 249 at 256, CA; and see *Stewart-Moore v Sprague* (1917) 34 TLR 113. See also **CONTRACT** vol 9(1) (Reissue) PARA 951 et seq.

10 *Re Steele* (1851) 20 LJ Ch 562; *Re Brady* (1867) 15 WR 632; *Re Jackson* [1915] 1 KB 371, DC; and see *Re Gaitskell* (1845) 1 Ph 576.

11 *Re West, King and Adams, ex p Clough* [1892] 2 QB 102 at 106. Retaining the amount of a bill without paying over the balance is not settling an account: *Re Bignold* (1845) 9 Beav 269 at 271. In all such cases the expedient course is to have such a settlement as amounts to an agreement of the costs within the Solicitors Act 1974 but any fair agreement which would have been valid under the general law may suffice to preclude taxation (now assessment) particularly if the solicitor's position has altered on the faith of it, such as by loss of vouchers: *Stedman v Collett* (1854) 17 Beav 608; *Turner v Hand* (1859) 27 Beav 561.

12 *Re Heath, Parker and Brett* (1898) 43 Sol Jo 98, CA.

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980. Payment to solicitor trustee.

The position of a solicitor trustee entitled to charge profit costs¹ against the trust estate and wishing to secure a final payment may be difficult, for the amount of costs cannot be settled with a co-trustee without the delivery of a bill², and if the solicitor trustee is a sole trustee there is no client to whom bills can be delivered and it is improbable that the beneficiaries will be able to settle the account themselves so as to preclude taxation (now assessment)³.

1 As to the meaning of 'profit costs' see PARA 972 note 1. As to the meaning of 'costs' see PARA 835 note 6.

2 *Re Fish, Bennett v Bennett* [1893] 2 Ch 413 at 423-424, CA; and see *Re Lethbridge* (1851) 18 LTOS 192. Executors and trustees, one of whom is a partner in a firm of solicitors but does not share in profits, can effectively make payment to the firm of costs due from the deceased to the firm at his death: *Re Harman & Son* [1912] WN 111. A trustee can tax the bill of the firm of which his co-trustee is a member: *Re HP Davies & Son* [1917] 1 Ch 216.

3 *Re Street* (1870) LR 10 Eq 165. See the Solicitors Act 1974 s 71(3), (4); and PARA 973.

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981. When assessment is finally precluded.

After the expiration of 12 months from the payment of the bill no application for an order for costs can be made at the instance of the party chargeable¹ or a third party or person interested². If the costs have been paid by a third party it seems that the party chargeable cannot obtain taxation (now assessment)³.

When 12 months have expired since unconditional payment the only remedy of the party chargeable for questioning the propriety of the payment is on proof of fraud or undue influence when moderation may be ordered⁴. It is not possible to make an application under the court's inherent jurisdiction since that jurisdiction is ousted by the statutory provisions⁵.

1 See the Solicitors Act 1974 s 70(4); and *Binns v Hey* (1843) 1 Dowl 661; *Re Sutton and Elliott* (1883) 11 QBD 377, CA. See also *Waters v Taylor* (1837) 2 My & Cr 526.

2 See the Solicitors Act 1974 s 71(1), (2), (4); and *Re Downes* (1844) 5 Beav 425 at 429; *Re Massey* (1845) 8 Beav 458; *Re Wellborne* [1901] 1 Ch 312, CA; *Re Harman & Son* [1912] WN 111. See also *Re Jackson, Re Cottrell, Boughton-Leigh v Boughton-Leigh* (1889) 40 ChD 495.

3 *Re Chapman* (1903) 20 TLR 3, CA; *Re C* (1909) 53 Sol Jo 616; *Re Foster, Barnato v Foster* [1920] 3 KB 306 at 320, CA.

4 As to moderation see PARA 965. See also *Re Tyther, ex p Pemberton* (1852) 2 De GM & G 960; *Watson v Rodwell* (1879) 11 ChD 150, CA (undue influence); *Re A Solicitor* [1961] Ch 491, [1961] 2 All ER 321, applying *Ex p Arrowsmith* (1806) 13 Ves 124 and *Storer & Co v Johnson* (1890) 15 App Cas 203, HL.

5 *Harrison v Tew* [1990] 2 AC 523, [1990] 1 All ER 321, HL.

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D. APPLICATION FOR ORDER FOR ASSESSMENT

982. Applications in the High Court.

A claim under the Solicitors Act 1974¹ which does not fall within the jurisdiction of the county court must be made in the High Court². Such a claim may be determined by:

- 1410 (1) a High Court Judge;
- 1411 (2) a Master, a costs judge or a district judge of the Principal Registry of the Family Division; or
- 1412 (3) a district judge, if the costs are for contentious business done in proceedings in the district registry of which he is a district judge, contentious business done in proceedings in a county court within the district of that registry or non-contentious business³.

¹ I.e. a claim under the Solicitors Act 1974 Pt III. A claim for an order under Pt III must be made by Part 8 claim form (see **CIVIL PROCEDURE**) or if the claim is made in existing proceedings, by application notice in accordance with Pt 23: CPR 67.3(2).

² See CPR 67.3(1); and PARA 970.

³ CPR 67.3(3).

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E. ASSESSMENT

983. Basis of assessment.

Where the court is to assess the amount of costs (whether by summary or detailed assessment¹) it will assess them on the standard basis or on the indemnity basis but will not allow in either case costs which have been unreasonably incurred or are unreasonable in amount².

Costs between solicitor and client are generally assessed on the indemnity basis³. The court will resolve any doubt which it may have as to whether costs were reasonably incurred or were reasonable in amount in favour of the receiving party⁴. However costs between solicitor and client are presumed:

- 1413 (1) to have been reasonably incurred if they were incurred with the express or implied consent of the client;
- 1414 (2) to be reasonable in amount if their amount was expressly or impliedly approved by the client;
- 1415 (3) to have been unreasonably incurred if they are of an unusual nature or amount and the solicitor did not tell his client that as a result he might not recover all of them from the other party⁵.

1 As to the meanings of 'detailed assessment' and 'summary assessment' see PARA 967.

2 CPR 44.4(1). See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1747. A solicitor is not bound to the terms of an estimate provided but any estimate of costs could be taken into consideration as a yardstick for determining what is reasonable: see *Mastercigars Direct Ltd v Withers LLP* [2007] EWHC 2733 (Ch), [2008] 3 All ER 417.

3 This is subject to CPR 48.8(1A) (see PARA 970; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1812) and does not apply to a bill which is to be paid out of the Community Legal Service Fund under the Legal Aid Act 1988 or the Access to Justice Act 1999: see CPR 48.8(1); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1812. As to the detailed assessment procedure where costs are payable out of the Community Legal Service Fund see CPR 47.17; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1794.

4 CPR 44.4(3). See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1747.

5 CPR 48.8(2). See also **CIVIL PROCEDURE** vol 12 (2009) PARA 1812.

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984. Procedure.

Where the court has made an order under the Solicitors Act 1974¹ for the assessment of costs payable to a solicitor by his client the following apply². The solicitor must serve a breakdown of costs within 28 days of the order for costs to be assessed and the client must serve points of dispute within 14 days after service on him of the breakdown of costs³.

If the solicitor wishes to serve a reply, he must do so within 14 days of service on him of the points of dispute⁴. Either party may file a request for a hearing date after points of dispute have been served but no later than three months after the date of the order for the costs to be assessed⁵.

1 le under the Solicitors Act 1974 Pt III (ss 56-75). However this procedure applies subject to any contrary order made by the court: CPR 48.10(6).

2 See CPR 48.10(1). See further **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

3 See CPR 48.10(2), (3). See further **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

4 See CPR 48.10(4). See further **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

5 See CPR 48.10(5). See further **CCIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

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F. COSTS OF ASSESSMENT UNDER THE SOLICITORS ACT 1974

985. Solicitor and own client assessment.

In assessments pursuant to the Solicitors Act 1974¹ at the instance of the party chargeable or the solicitor² or third party³ or person interested⁴, unless the order for assessment was made on the application of the solicitor and the party chargeable does not attend the assessment⁵, or unless the order for assessment otherwise provides⁶, the costs of assessment must be paid according to the event of the assessment⁷, that is to say if one-fifth of the amount of the bill⁸ is assessed off the solicitor must pay the costs⁹ but otherwise the party chargeable must pay them¹⁰. The costs officer may, however, certify to the court any special circumstances and the court may make such order in respect of the payment of the costs of assessment as is thought fit¹¹, as by depriving the solicitor of the costs of the assessment even though the bill has been reduced by one-fifth¹² or allowing him the costs even where so reduced¹³.

1 Every order for assessment requires the costs officer to assess not only the bill but also the costs of the assessment and to certify what is due to or by the solicitor in respect of the bill and in respect of the costs of the assessment: Solicitors Act 1974 s 70(7). The Solicitors Act 1974 s 70(7)-(10) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65 which reflects the replacement of taxation of costs with assessment of costs and the replacement of the taxing officer with the costs officer. As to assessment of costs see PARA 967 et seq.

2 See the Solicitors Act 1974 s 70(1), (2); and PARA 971.

3 Ie an applicant pursuant to the Solicitors Act 1974 s 71(1): see PARA 971.

4 See the Solicitors Act 1974 s 71(3); and PARA 971.

5 Solicitors Act 1974 s 70(9)(a). A person does not attend by writing letters to the taxing officer: *Re Upperton* (1882) 30 WR 840. See also *Ex p Woollett* (1844) 12 M & W 504 at 506. If after due notice of assessment either party fails to attend, the costs officer may proceed with the assessment ex parte: Solicitors Act 1974 s 70(8). The Solicitors Act 1974 s 70(8), (9) is prospectively amended by the Legal Services Act 2007 Sch 16 para 65(g), (h) which reflects the replacement of taxation of costs with assessment of costs and the replacement of the taxing officer with the costs officer.

6 Solicitors Act 1974 s 70(9)(b). The same follows if an order under s 70(10) so provides: see s 79(9)(b).

7 Solicitors Act 1974 s 70(9). If the order to assess does not deal with the incidence of the cost of assessment the statutory rule still applies: see *Re Burn and Berridge* (1908) 99 LT 606. However it was held that allowance must be made for items increased by the taxing master: see *R v Eastwood* (1856) 6 E & B 285. Items struck out of the bill because the solicitor was not retained to do the work which they are charged for are not taken into account (*Re Taxation of Costs, Re a Solicitor* [1936] 1 KB 523, [1936] 1 All ER 491, CA) nor are items which have been wrongly included as disbursements and therefore have been struck out (*Re Haigh* (1849) 12 Beav 307). Where several bills owing by a party chargeable are assessed together and the aggregate amount of the bills is reduced by one-fifth or more, the solicitor pays the costs of the assessment even though one or some of the bills are not so reduced: see *Ex p Barrett* (1834) 3 Deac & Ch 731; and see *Beardsall v Cheetham* (1858) EB & E 243 at 245. If only one of several bills is assessed and the solicitor does not object to this, the costs follow the ordinary rule even though the other bills have not been assessed: see *R v Varty* (1844) 2 LTOS 368. So, too, the ordinary one-fifth rule applies where a bill is assessed as one item in an account between a solicitor and his own client (*May v Biggenden, Cheeseman v May* (1857) 24 Beav 207); or where a lessor's solicitor includes costs of concurring parties in his bill the one-fifth rule applies even though his own costs are not reduced by one-fifth (*Re Fletcher and Dyson* [1903] 2 Ch 688). If the assessment takes place after action brought and anything is found due, the client must pay the costs of the action (*Re Hair* (1848) 11 Beav 96; and see *Thomas v Swansea Corpn* (1843) 2 Dowl NS 1003) although the solicitor must pay the costs of the

assessment if one-fifth is taxed off (*Smith v Edwardes* (1888) 22 QBD 10, CA, where the proceedings were for summary judgment under RSC Ord 14; *Ex p Woollett* (1844) 12 M & W 504; *Higgins v Woolcott* (1826) 5 B & C 760; and see *Featherstonhaugh v Reen* (1833) 1 Cr & M 495) the client being liable if less than one-fifth is taxed off (*Wilson v Knapp* (1840) 8 Dowl 426; *Re Shaw* (1851) 2 LM & P 214).

8 This reference to the fraction of the amount of the bill taxed off is to be taken, where the taxation (now assessment) concerns only part of the costs covered by the bill, as a reference to that fraction of the amount of those costs which is being taxed: Solicitors Act 1974 s 70(12).

9 This does not apply to assessments in bankruptcy (*Re Marsh, ex p Marsh* (1885) 15 QBD 340, CA) or perhaps where the assessment takes place after the solicitor's death (see *Re Jackson, ex p Hammond* (1839) 4 Deac 48; *Gale v Pakington* (1825) M'Cle & Yo 354) but see also the Solicitors Act 1974 s 68(3); and PARA 956 note 3. The rule does not apply as against the representatives of a deceased client: *Jefferson v Warrington* (1840) 7 M & W 137. Where the solicitor is bankrupt his trustee is liable for the costs if he delivers a bill in respect of which one-fifth or more is assessed off: see *Re Peers* (1856) 21 Beav 520. The solicitor himself is liable if he obtains his discharge pending the assessment: see *Whalley v Williamson* (1843) 6 Man & G 269. The amount of the excess over one-fifth is immaterial: *Swinburn v Hewitt* (1838) 7 Dowl 314 (where the excess amounted to 2.5 pence). See also *Morris v Parkinson* (1835) 3 Dowl 744; *Davison v Allen* (1840) 8 Dowl 673. The one-fifth rule applies even if the solicitor has accepted in full discharge a sum less than that allowed by the costs judge see *Re Elwes and Turner* (1888) 58 LT 580, where no costs were given; although in such a case the costs judge might well certify special circumstances and exercise discretion over the costs.

10 Solicitors Act 1974 s 70(9). If the client is a trustee or co-trustee he will be liable to bear the costs, but if the costs were properly incurred he will be entitled to be indemnified out of the trust fund: *Re HP Davies & Sons* [1917] 1 Ch 216 at 223 per Neville J.

11 See the Solicitors Act 1974 s 70(10). The discretion may be exercised in favour of the solicitor as well as in favour of the client: *Re Richards* [1912] 1 Ch 49 at 54; and see *Russell v Yorke* (1839) 7 Scott 130.

12 *Webb v Stone* (1794) 1 Anst 260; *Yea v Yea* (1794) 2 Anst 494; *Baker v Mills* (1834) 2 Dowl 382; *Holderness v Barkworth* (1838) 3 M & W 341; *Hodge v Bird* (1844) 6 Man & G 1020.

13 *Re Mackenzie, ex p Short* (1893) 69 LT 751, CA; and see *Re Elwes and Turner* (1888) 58 LT 580.

UPDATE

985 Solicitor and own client assessment

NOTES 1, 5--Amendments made by Legal Services Act 2007 Sch 16 para 65 in force 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(viii) Interest on Costs/986. Interest on costs of non-contentious business.

(viii) Interest on Costs

986. Interest on costs of non-contentious business.

A solicitor¹ may charge interest on the unpaid amount of his costs², including any paid disbursements³ and value added tax⁴, after the required information⁵ has been given in writing⁶ to the entitled person⁷. Where an entitlement to interest arises by virtue of this provision, and subject to any agreement made between a solicitor and client⁸, the period for which interest may be charged may run from one month after the date of delivery of a bill⁹, unless the solicitor fails to lodge an application within one month of receipt of a request for a remuneration certificate¹⁰, in which case no interest is payable in respect of the period between one month after receiving the request and the actual date on which the application is lodged¹¹.

Subject to any agreement between a solicitor and client, the rate of interest must not exceed the rate for the time being payable on judgment debts¹².

Interest where applicable must be calculated by reference to the following:

- 1416 (1) if a solicitor is required to obtain a remuneration certificate, the total amount of the costs certified to be fair and reasonable plus paid disbursements and VAT;
- 1417 (2) if an application is made for the bill to be assessed, the amount ascertained on assessment¹³;
- 1418 (3) if an application is made for the bill to be assessed or a solicitor is required to obtain a remuneration certificate and for any reason the assessment or application for a remuneration certificate does not proceed, the unpaid amount of the costs shown in the bill or such lesser sum as may be agreed between the solicitor and the client, plus paid disbursements and VAT¹⁴.

1 Ie including a recognised body: see PARA 936 text and notes 21-22.

2 As to the meaning of 'costs' see PARA 936 note 20.

3 As to the meaning of 'paid disbursements' see PARA 940 note 12.

4 As to the treatment of VAT see PARA 960.

5 Ie the information specified in the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8 (see PARA 939): art 14(1).

6 Ie in compliance with the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 6 or art 7: see PARA 938.

7 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 14(1). As to the meaning of 'entitled person' see PARA 937 note 3.

8 As to non-contentious business agreements see PARAS 942-943. As to the meaning of 'non-contentious business' see PARA 933 note 4; and as to the meaning of 'client' see PARA 937 note 3.

9 As to the necessity to deliver a bill see PARA 956.

10 Ie under the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 4: see PARA 938. As to the meaning of 'remuneration certificate' see PARA 938 note 4.

- 11 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 14(2).
- 12 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 14(3).
- 13 As to assessment of costs see PARA 967 et seq.
- 14 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 14(4).

UPDATE

986 Interest on costs of non-contentious business

TEXT AND NOTES--SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(viii) Interest on Costs/987. Interest on costs of contentious business.

987. Interest on costs of contentious business.

In contentious business¹ an agreement by the party to pay interest on the costs², if otherwise valid³, appears to be binding⁴.

On every assessment of costs in respect of any contentious business the costs officer has power, subject to rules of court, to allow interest on money disbursed by the solicitor⁵ for the client⁶ at such rate and from time to time as he thinks just⁷. A similar power applies with respect to money disbursed by a recognised body⁸ for a client⁹.

A solicitor suing a client for unpaid costs can claim statutory interest which the court has a discretion to award¹⁰.

1 As to the meaning of 'contentious business' see PARA 933 note 2.

2 As to the meaning of 'costs' see PARA 835 note 6.

3 As to contentious business agreements see PARA 945. The solicitor should explain to the client that apart from agreement interest is not recoverable on untaxed profit costs save as mentioned in PARA 988 note 1.

4 See *Lyddon v Moss* (1859) 4 De G & J 104; *Shannon v Casey* (1874) 8 IR Eq 307. Where there is an agreement to pay interest on future costs a client will not be entitled to the usual order for assessment (*Re Fanshawe* (1905) 49 Sol Jo 404; a case of discharging such an order obtained ex parte without disclosing the agreement) so that provision for allowing such interest should presumably be made.

5 As from a day to be appointed this also applies to where money has been improperly retained by an employee of the solicitor: see the Solicitors Act 1974 s 66(a) (prospectively amended by the Legal Services Act 2007 Sch 16 para 62(d)). At the date at which this volume states the law no such day had been appointed.

6 As to the meaning of 'client' see PARA 835 note 6.

7 Solicitors Act 1974 s 66(a). See *Hartland v Murrell* (1873) LR 16 Eq 285. The solicitor cannot appropriate payments to costs so as to leave disbursements unpaid and therefore bearing interest: *Re Harrison* (1886) 33 ChD 52 CA. The Solicitors Act 1974 s 66(a) is prospectively amended by the Legal Services Act 2007 Sch 16 para 62(b), (c) which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967 et seq.

8 As to the meaning of 'recognised body' see PARA 687 note 3.

9 See the Administration of Justice Act 1985 Sch 2 para 26(a) (prospectively renumbered as Sch 2 para 26(1)(a) by the Legal Services Act 2007 Sch 16 para 113(b)). The Administration of Justice Act 1985 Sch 2 para 26(a) is also prospectively amended by the Legal Services Act 2007 Sch 16 para 113(a), (b) which reflects the replacement of taxation of costs with assessment of costs. See also the Judgements Act 1838 s 17; and PARA 988.

10 See the Supreme Court Act 1981 s 35A; the County Court Act 1984 s 69(1); and PARA 987. As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

UPDATE

987 Interest on costs of contentious business

NOTE 5--Day appointed is 31 March 2009: SI 2009/503.

NOTES 7, 9--Amendments made by Legal Services Act 2007 Sch 16 paras 62(b), (c), 113(b) in force 1 January 2010: SI 2009/3250.

NOTE 10--Day appointed is 1 October 2009: SI 2009/1604.

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988. Interest on judgments in respect of bill of costs.

A solicitor who sues upon his bill of costs and recovers judgment is entitled to interest on the amount recovered from the time of entering up the judgment¹.

¹ Judgments Act 1838 s 17 (amended by the Civil Procedure Acts Repeal Act 1879 s 2, Schedule Pt I; and by virtue of SI 1993/564); *Hunt v RM Douglas (Roofing) Ltd* [1990] 1 AC 398 HL, [1988] 3 All ER 823, HL. The current rate of interest on judgment debts is 8%: Judgment Debts (Rate of Interest) Order 1993, SI 1993/564, art 2.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/3. SOLICITORS/(9) REMUNERATION/(viii) Interest on Costs/989. Interest on money improperly retained by solicitor.

989. Interest on money improperly retained by solicitor.

Upon assessing the costs¹ of contentious business² the costs officer may allow interest on money of the client³ in the hands of and improperly retained by the solicitor⁴ at such rate and from such time as the costs officer thinks just⁵. There is a similar power with respect to money of the client in the possession of, and improperly retained by, a recognised body or any manager or employee of the body⁶.

1 As to the meaning of 'costs' see PARA 835 note 6. The Solicitors Act 1974 s 66(a) is prospectively amended by the Legal Services Act 2007 Sch 16 para 62 which reflects the replacement of taxation of costs with assessment of costs and the replacement of the taxing officer with the costs officer. As to assessment of costs see PARA 967.

2 As to the meaning of 'contentious business' see PARA 933 note 2.

3 As to the meaning of 'client' see PARA 835 note 6.

4 As from a day to be appointed this also applies to money of the client in the hands of and improperly retained by an employee of the solicitor: see the Solicitors Act 1974 s 66(a) (prospectively amended by the Legal Services Act 2007 Sch 16 para 62(d)). At the date at which this volume states the law no such day had been appointed.

5 Solicitors Act 1974 s 66(a) (prospectively amended see notes 1, 4). As to dealings with clients' money see PARA 835 et seq.

6 See the Administration of Justice Act 1985 Sch 2 para 26(a) (amended by the Legal Services Act 2007 Sch 16 para 113(b)(iii); and prospectively renumbered as Sch 2 para 26(1)(a) by the Legal Services Act 2007 Sch 16 para 113(b)). As to the meaning of 'recognised body' see PARA 687 note 3.

UPDATE

989 Interest on money improperly retained by solicitor

NOTES 1, 5--Amendments made by Legal Services Act 2007 Sch 16 paras 6, 113(b) in force 1 January 2010: SI 2009/3250.

NOTE 4--Day appointed is 31 March 2009: SI 2009/503.

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(ix) Security for Costs

990. Right to take security for costs.

At common law a solicitor could take security from his client for costs already due, the security standing good for the amount justly due with interest¹, although he could not obtain a valid security for future costs². As regards future costs both in respect of contentious³ and non-contentious⁴ business his right to take security is now conferred by statute⁵. In relation to non-contentious business the security may cover interest to which the solicitor may become entitled⁶.

In contentious business, if a solicitor who has been retained by a client⁷ to conduct such business requests the client to pay a reasonable sum of money on account of the costs⁸ incurred or to be incurred in the conduct of that business, and the client refuses or fails within a reasonable time to make that payment, the refusal or failure is deemed to be good cause whereby the solicitor may withdraw from the retainer upon giving reasonable notice to the client⁹.

1 *Saunderson v Glass* (1742) 2 Atk 296; *Brown v Pring* (1750) 1 Ves Sen 407; *Williams v Piggott* (1825) Jac 598; *Fowler v Moore* (1837) 2 Jo Ex Ir 415; *Bristowe v Warner* (1847) 10 I Eq R 246, commenting on *Re Evans, ex p Bovill* (1826) 2 Mont & A 382n; *Cheslyn v Dalby* (1836) 2 Y & C Ex 170; *Jones v Roberts* (1846) 9 Beav 419; *Nelson v Boothe* (1857) 3 Jur NS 951; *Morgan v Higgins* (1859) 1 Giff 270; *Anderson v Radcliffe and Walker* (1858) EB & E 806; *Shaw v Neale* (1858) 6 HL Cas 581; and see *Waters v Taylor* (1837) 2 My & Cr 526. As to the validity of mortgages for costs see PARA 808.

2 *Pitcher v Rigby* (1821) 9 Price 79; *Jones v Tripp* (1821) Jac 322; *Williams v Piggott* (1825) Jac 598; but see *Waters v Taylor* (1837) 2 My & Cr 526; *Wigney v Wigney* (1882) 7 PD 228.

3 As to the meaning of 'contentious business' see PARA 933 note 2.

4 As to the meaning of 'non-contentious business' see PARA 933 note 4.

5 A solicitor may take security from his client for his costs, to be ascertained by assessment or otherwise, in respect of any contentious business to be done by him: Solicitors Act 1974 s 65(1). An order under s 56 (see PARA 936) may authorise and regulate the taking by a solicitor from his client of security for payment of any remuneration, to be ascertained by assessment or otherwise, which may become due to him under any such order and the allowance of interest: s 56(6).

6 Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 12(3). As to entitlement to interest see art 14; and PARA 986.

7 As to the meaning of 'client' see PARA 835 note 6.

8 As to the meaning of 'costs' see PARA 835 note 6.

9 Solicitors Act 1974 s 65(2). As to withdrawal from a retainer generally see PARA 784.

UPDATE

990 Right to take security for costs

NOTE 5--Solicitors Act 1974 s 65(1) as amended by Legal Services Act 2007 Sch 16 para 61.

NOTE 6--SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

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991. Effect of security for costs.

In the absence of a written agreement fixing the amount of payment for specific work to be done¹, the giving of security for costs by the client does not relieve the solicitor from the necessity of delivering a bill of costs and submitting to having it assessed if the client wishes it².

1 As to such agreements see PARA 931 et seq. See also PARA 763 et seq.

2 *Brown v Pring* (1750) 1 Ves Sen 407; *Morgan v Higgins* (1859) 1 Giff 270. As to the necessity for delivering a bill of costs see PARA 956.

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992. Setting aside security for costs.

The court will re-open a transaction where security for costs¹ is given in circumstances which amount to fraud² or undue influence³, or where there has been no proper settlement of accounts amounting to a binding repayment and agreement of the amount⁴.

If the security is taken in the form of a mortgage, great care must be taken, unless the client is separately advised, that no terms which are not strictly usual or are in any way unfairly burdensome to the client are inserted⁵, otherwise the court will set the transaction aside and only enforce the security of such sum as it is equitable that the client should pay⁶.

1 As to the right to take security for costs see PARA 990.

2 *Ward v Sharp* (1884) 53 LJ Ch 313. As to fraud generally see **MISREPRESENTATION AND FRAUD**.

3 *Walmesley v Booth* (1741) 2 Atk 25; *Watson v Rodwell* (1879) 11 ChD 150, CA; *Eyre v Hughes* (1876) 2 ChD 148. As to undue influence generally see **MISREPRESENTATION AND FRAUD** vol 31 (2003) PARA 839 et seq. See also **EQUITY** vol 16(2) (Reissue) PARA 417 et seq.

4 See *Davies v Parry* (1859) 1 Giff 174; *Morgan v Higgins* (1859) 1 Giff 270. See also *Todd v Wilson* (1846) 9 Beav 486; *Gomley v Wood and Daly* (1846) 3 Jo & Lat 678; and **EQUITY** vol 16(2) (Reissue) PARA 695.

5 See PARA 808. As to mortgage generally see **MORTGAGE** vol 77 (2010) PARA 101 et seq.

6 *Cowdry v Day* (1859) 1 Giff 316; *Cockburn v Edwards* (1881) 18 ChD 449, CA; *Craddock v Rogers* (1884) 53 LJ Ch 968 (affd [1885] WN 134, CA). See also *Pooley's Trustee v Whetham* (1886) 33 ChD 111, CA.

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(x) Solicitor's Remedies for Costs

993. When an action for costs may be brought.

A solicitor¹ is entitled to maintain an action for the costs due to him at the expiration of one month from the delivery of his bill of costs to his client² or within the month if leave has been obtained³, unless the court has already⁴ made an order restraining him from so doing pending assessment. However, in the case of non-contentious business⁵, unless the costs have been assessed the solicitor must first have informed the client in writing of his right to require application to be made for a remuneration certificate and of the statutory provisions relating to assessment⁶.

1 A solicitor who carries on business under a firm name may sue in his own name if his partner is only a nominal partner: *Kell v Nainby* (1829) 10 B & C 20; *Spurr v Cass*, *Cass v Spurr* (1870) LR 5 QB 656.

2 As to delivery of the bill see PARA 956. As to the meaning of 'client' see PARA 835 note 6.

3 See PARA 956 note 1.

4 Where an action is commenced by the client to which the solicitor pleads his unsettled bill of costs by way of defence the proper course is to apply in that action for a stay of proceedings pending assessment: see *Re Webster* [1891] 2 Ch 102, 108.

5 As to the meaning of 'non-contentious business' see PARA 933 note 4.

6 See the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8; and PARA 939. As to the meaning of 'remuneration certificate' see PARA 938 note 4.

UPDATE

993 When an action for costs may be brought

NOTES 5, 6--SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

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994. Limitation of actions.

For the purposes of an action on his bill of costs, time begins to run against the solicitor from the date when the work to which it relates was completed and not from the expiration of one month from delivery of the bill¹, despite the statutory restriction on bringing an action for recovery of the costs within that month². If some only of the items included in the bill are statute-barred the solicitor may recover in respect of the balance³.

1 *Coburn v Colledge* [1897] 1 QB 702, CA. See also **LIMITATION PERIODS** vol 68 (2008) PARA 937. As to the duration of a solicitor's retainer see PARA 778 et seq. The time within which accounts may be re-opened is not limited by the statutes of limitation: see *Cheese v Keen* [1908] 1 Ch 245. As to the effect of fraud or mistake on the running of time see **LIMITATION PERIODS** vol 68 (2008) PARA 1224 et seq. It is not for the receiver, appointed in respect of the estate of a person incapable by reason of mental disorder of administering his property, to raise the defence of the limitation enactment as he is not liable for the costs: *Re E G* [1914] 1 Ch 927 at 934, CA, per Cozens-Hardy MR.

2 See the Solicitors Act 1974 s 69(1); and PARA 956.

3 See **LIMITATION PERIODS** vol 68 (2008) PARA 973.

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995. Recovery in bankruptcy.

A bankruptcy petition may be presented by the solicitor against his client in respect of his costs¹ even though he has not delivered his bill of costs and is not therefore in a position to maintain an action². Upon the application of creditors or of the client, the petition may be stayed until the bill has been delivered and the costs assessed³. Similarly the solicitor may prove in the client's bankruptcy for the amount of his costs⁴ even though he has delivered no bill⁵ and even though the costs have not been assessed⁶. In this case the trustee in bankruptcy may require full particulars of how the amount is made up⁷, and the proof when complete may be referred to a costs officer for consideration under the court's inherent jurisdiction⁸.

1 A solicitor who has obtained a final order and is in a position to issue execution for costs may serve a bankruptcy notice if his debt is of the required amount and upon non-compliance with it may petition in bankruptcy in accordance with the provisions of the Insolvency Act 1986. As to bankruptcy generally see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

2 See *Ex p Sutton* (1805) 11 Ves 163; *Ex p Dewdney, ex p Seaman* (1809) 15 Ves 479 at 488-489; *Ex p Steele* (1809) 16 Ves 161; *Re Howell, ex p Howell* (1812) 1 Rose 312; *Re Ford, ex p Ford* (1838) 3 Deac 494. Where the costs relate to non-contentious business (see PARA 933 note 4) the solicitor must inform the client in writing of his right (if the bill is for less than £50,000) to require the solicitor to obtain a remuneration certificate (see PARA 938 note 4) and of the assessment provisions of the Solicitors Act 1974: see PARA 939. A solicitor may not present a petition to wind up a client company based on a debt for costs in respect of non-contentious business until the information required by the Solicitors' (Non-Contentious Business) Remuneration Order 1994, SI 1994/2616, art 8 has been given to the client: see PARA 939; and *Re Laceward Ltd* [1981] 1 All ER 254, [1981] 1 WLR 133. The service of a statutory demand for payment of the solicitor's costs does not constitute the bringing of an action; accordingly, a statutory demand may be served before the expiration of a month from the date of delivery of the bill: *Re a Debtor (No 88 of 1991)* [1993] Ch 286, [1992] 4 All ER 301.

3 *Re Symes, ex p Prideaux* (1821) 1 Gl & J 28.

4 *Re Duffield, ex p Peacock* (1873) 8 Ch App 682; and see *Re Whelan, ex p Sadler* (1878) 48 LJ Bcy 43; *Re a Debtor (No 68 of 1911)* [1911] 2 KB 652 at 655, CA (the future possible liability to pay inter partes costs).

5 *Eicke v Nokes* (1829) Mood & M 303; *Re Woods, ex p Ditton* (1880) 13 ChD 318, CA. The official receiver is not under any duty to require the delivery of a bill in every case: *Re Potts, ex p Etablissements Callot and De Schrijver v Leonard Tubbs & Co and Official Receiver* [1934] Ch 356 at 362, 364 per Farwell J.

6 *Re Woods, ex p Ditton* (1880) 13 ChD 318, CA; *Re Dowson, ex p Webb* (1851) 4 De G & Sm 366.

7 *Re Van Laun, ex p Chatterton* [1907] 2 KB 23, CA.

8 *Re Woods, ex p Ditton* (1880) 13 ChD 318, CA.

UPDATE

995 Recovery in bankruptcy

NOTE 2--SI 1994/2616 replaced: Solicitors' (Non-Contentious Business) Remuneration Order 2009, SI 2009/1931.

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(xi) Lien

A. IN GENERAL

996. Right to exercise lien and duty to inform client.

At common law a solicitor has two rights which are termed liens¹. The first is a right to retain property already in his possession until he is paid costs due to him in his professional capacity² and the second is the right to ask the court to direct that personal property recovered under a judgment obtained by his exertions stand as security for his costs of such recovery. In addition, a solicitor has by statute a right to apply to the court for a charging order on property recovered or preserved through his instrumentality in respect of his assessed costs of the suit, matter or proceeding prosecuted or defended by him³.

A solicitor is under a duty to advise his client that there are circumstances where the solicitor may be entitled to exercise a lien for unpaid costs⁴.

1 As to lien generally see **LIEN** vol 68 (2008) PARA 801 et seq.

2 The solicitor's retaining lien is not different from the liens of other persons but if the exercise of it will cause damage to the client the property may be ordered to be handed over upon payment into court: *Richards v Platel* (1841) 5 Jur 834; and see *Re Broomhead* (1847) 5 Dow & L 52.

3 See the Solicitors Act 1974 s 73; and PARA 1011 et seq.

4 Solicitors' Code of Conduct 2007 r 2.03(1)(e).

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B. RETAINING LIEN

997. Property affected by retaining lien.

The general rule is that the retaining lien extends to any deed, paper or personal chattel which has come into the solicitor's¹ possession in the course of his employment² and in his capacity as solicitor with the client's sanction³ and which is the client's property⁴.

The following may thus be subject to a retaining lien:

- 1419 (1) a bill of exchange⁵;
- 1420 (2) a cheque⁶;
- 1421 (3) a policy of assurance⁷;
- 1422 (4) a share certificate⁸;
- 1423 (5) an application for shares⁹;
- 1424 (6) a debenture trust deed¹⁰;
- 1425 (7) letters patent¹¹;
- 1426 (8) letters of administration¹²;
- 1427 (9) money¹³, including money in a client account¹⁴, although only the amount due to the solicitor¹⁵, and maintenance received by a solicitor if not subject to an order as to its application or bound to be applied, in effect, as trust money¹⁶; or
- 1428 (10) documents in a drawer of which the solicitor is given the key¹⁷.

The lien does not extend to:

- 1429 (a) a client's original will; or
- 1430 (b) a deed in favour of the solicitor but reserving a life interest and power of revocation to the client¹⁸; or
- 1431 (c) original court records¹⁹; or
- 1432 (d) documents which did not come into the solicitor's hands in his capacity as solicitor for the person against whom the lien is claimed or his successors²⁰, but as mortgagee²¹, steward of a manor²² or trustee²³.

Moreover, where documents are delivered to a solicitor for a particular purpose under a special agreement which does not make express provision for a lien in favour of the solicitor, as perhaps the raising of money²⁴, or money is paid to the solicitor for a particular purpose so that he becomes a trustee of the money²⁵, no lien arises over those documents or that money unless subsequently left in the solicitor's possession for general purposes²⁶. Otherwise the lien extends to the property whatever the occasion of delivery²⁷, except that where a solicitor acts for both mortgagor and mortgagee and the mortgage is redeemed the solicitor cannot set up a lien on the deeds against the mortgagor²⁸.

¹ If a firm is retained and after a new partner is taken in documents come into the possession of the new firm as the client's solicitors, the partners in the original firm have no lien on the documents separately since they did not come into their possession solely but into the possession of themselves and the new partner: *Re Forshaw* (1847) 16 Sim 121. However, the introduction of a new partner does not affect an existing lien: *Pelly v Wathen* (1849) 7 Hare 351 at 362 per Wigram V-C; *affd* (1851) 1 De GM & G 16.

- 2 *Anon* (1685) Comb 43; *Anon* (1701) 12 Mod Rep 554; *Ex p Nesbitt* (1805) 2 Sch & Lef 279; *Stevenson v Blakelock* (1813) 1 M & S 535; *Warburton v Edge* (1839) 9 Sim 508.
- 3 *Gibson v May* (1853) 4 De GM & G 512.
- 4 *Sheffield v Eden* (1878) 10 ChD 291, CA (mortgages to solicitors which were therefore their own deeds), applied in *Barratt v Gough-Thomas* [1951] Ch 242, CA. However, a charging order may be made on property in which the client has no interest: see *Bailey v Birchall* (1865) 2 Hem & M 371; and PARA 1017.
- 5 *Gibson v May* (1853) 4 De GM & G 512.
- 6 *Hanson v Reece* (1857) 27 LJ Ch 118.
- 7 *West of England Bank v Batchelor* (1882) 51 LJ Ch 199: see PARA 1005. See also *Stedman v Webb* (1839) 4 My & Cr 346.
- 8 *General Share Trust Co v Chapman* (1876) 1 CPD 771.
- 9 *Re Capital Fire Insurance Association* (1883) 24 ChD 408, CA.
- 10 *Re Dee Estates Ltd, Wright v Dee Estates Ltd* [1911] 2 Ch 85, CA.
- 11 *Re Aubusson, ex p Solomon* (1821) 1 Gl & J 25.
- 12 *Barnes v Durham* (1869) LR 1 P & D 728; *Re Martin* (1883) 13 LR Ir 312, Ir CA.
- 13 See *Miller v Atlee* (1849) 3 Exch 799; *Re Phoenix Life Assurance Co, Howard and Dolman's Case* (1863) 1 Hem & M 433 at 444.
- 14 *Loescher v Dean* [1950] Ch 491, [1950] 2 All ER 124. Such money will be excluded from an injunction in favour of a judgment creditor which freezes the assets of the solicitor's client (against whom judgment has been entered) pending satisfaction of the judgment debt: *Prekookeanska Plovdba v LNT Lines Srl* [1988] 3 All ER 897, [1989] 1 WLR 753. See also *Euro Commercial Leasing Ltd v Cartwright & Lewis* [1995] 2 BCLC 618, [1995] BCC 830.
- 15 *Miller v Atlee* (1849) 3 Exch 799. Since money is divisible the solicitor's right to retain can only extend to such part as is equal to the sum justly due to him. Cf *Ex p Bremner* (1866) LR 1 P & D 254; and see *Prekookeanska Plovdba v LNT Lines Srl* [1988] 3 All ER 897, [1989] 1 WLR 753.
- 16 *Ex p Bremner* (1866) LR 1 P & D 254. It is otherwise if the money is ordered to be applied for the wife's maintenance or received by her solicitors as trustees: *Leete v Leete* (1879) 48 LJP 61; *Cross v Cross* (1880) 43 LT 533.
- 17 *Re Markby, ex p Markby Assignees* (1864) 11 LT 250.
- 18 *Balch v Symes* (1823) Turn & R 87.
- 19 *Bird v Heath* (1848) 6 Hare 236; *Clifford v Turrill* (1848) 2 De G & Sm 1.
- 20 *Re Long, ex p Fuller* (1881) 16 ChD 617. Thus a document coming into the possession of one of two joint creditors, being solicitors retained, is not subjected to a lien for the costs of work previously done upon a joint retainer: *Vaughan v Vanderstegen, Annesley's Case* (1854) 2 Drew 408. Nor are deeds in the possession of a firm subject to a lien for the separate claims of partners: *Pelly v Wathen* (1849) 7 Hare 351 at 362 per Wigram V-C (affd (1851) 1 De GM & G 16); cf *Re Gough, Lloyd v Gough* (1894) 70 LT 725; *Meguerditchian v Lightbound* [1917] 2 KB 298, CA. Where a minor attains his majority and repudiates an action begun on his behalf, the solicitor of the next friend has no lien over deeds brought into court by a defendant: *Dunn v Dunn* (1855) 7 De GM & G 25.
- 21 *Vaughan v Vanderstegen, Annesley's Case* (1854) 2 Drew 408; *Pelly v Wathen* (1849) 7 Hare 351. As to a lien as against a mortgagee or mortgagor see PARA 1000.
- 22 *Champernown v Scott* (1821) 6 Madd 93.
- 23 *Re Clark, ex p Newland* (1876) 4 ChD 515; *Re Gough, Lloyd v Gough* (1894) 70 LT 725 at 726.
- 24 *Ex p Pemberton* (1810) 18 Ves 282. Cf *Young v English* (1843) 7 Beav 10. See also *Stevenson v Blakelock* (1813) 1 M & S 535 at 543.

25 *Stunmore v Campbell & Co* [1892] 1 QB 314, CA. See also *Halvanon Insurance Co Ltd v Central Reinsurance Corpn* [1988] 3 All ER 857, [1988] 1 WLR 1122 (solicitors held to be trustees of money paid into their account as an alternative to payment into court).

26 *Re Mid-Kent Fruit Factory* [1896] 1 Ch 567 at 570.

27 *Ex p Sterling* (1809) 16 Ves 258; *Friswell v King* (1846) 15 Sim 191, where a book was delivered for the purpose of being exhibited at a trial; *Re Leah, ex p Jabet* (1860) 2 LT 72, where documents were delivered for effecting a compromise with creditors.

28 *Barrett v Gough-Thomas* [1951] Ch 242, [1950] 2 All ER 1048, CA.

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998. Extent of retaining lien.

A retaining lien extends only to the solicitor's assessable costs, charges and expenses¹ incurred on the instructions of the client against whom the lien is claimed², and for which the client is personally liable³, including the costs of recovering the remuneration by action⁴ or upon an assessment⁵. The lien therefore does not extend to costs which are due to the solicitor in a capacity other than that of solicitor⁶, or to loans⁷, or to sums paid by the solicitor at the client's request and thus in effect lent by the solicitor⁸ or to debts generally⁹. The lien extends to costs which are not recoverable by action because they are barred under the statutes of limitation¹⁰, but does not extend to costs which are irrecoverable because the solicitor was unqualified when the work was done¹¹.

The lien is a general lien extending to all costs due¹² to the solicitor and is not limited to the costs incurred in relation to the particular documents in question or upon the particular instructions in consequence of which the property came into the solicitor's possession¹³. In this respect the retaining lien differs from the lien on property recovered¹⁴.

1 *Re Taylor, Stileman and Underwood* [1891] 1 Ch 590, CA. See also *Worrall v Johnson* (1820) 2 Jac & W 214 at 218; *Bozon v Bolland* (1839) 4 My & Cr 354 at 358.

2 *Re Phoenix Life Assurance Co, Howard and Dolman's Case* (1863) 1 Hem & M 433 (business ultra vires therefore no effective instructions); *Re Galland* (1885) 31 ChD 296 at 305, CA (employment by promoters; lien claimed against company); *Turner v Deane* (1849) 6 Dow & L 669 (work done for firm; deed property of the partner); *Re Hanbury, Whitting and Nicholson* (1896) 75 LT 449; *Meguerditchian v Lightbound* [1917] 2 KB 298, CA.

3 *Re Mason and Taylor* (1878) 10 ChD 729; and see *Re Dee Estates Ltd, Wright v Dee Estates Ltd* [1911] 2 Ch 85 at 92, CA; *Lightfoot v Keane* (1836) 1 M & W 745 (as trustees have no power to mortgage it was held that they could not create a lien for costs which were their personal liability). See further PARA 1000.

4 *Lambert v Buckmaster* (1824) 2 B & C 616; *Gray v Graham* (1855) 2 Macq 435 at 439, HL; but see *Gray v Wardrop's Trustees* (1851) 23 SC Jur 450.

5 *Re Galland* (1885) 31 ChD 296 at 303, CA, per Chitty J; *Re Hanbury, Whitting and Nicholson* (1896) 75 LT 449. The lien does not extend to expenses incurred in consequence of applications for the deeds: *Re Sharpe* (1832) 1 Dowl 432.

6 Eg as land agent: *Re Walker, Meredith v Walker* (1893) 68 LT 517.

7 *Re Taylor, Stileman and Underwood* [1891] 1 Ch 590, CA; but see *Re Riddell, Public Trustee v Riddell* as reported in [1936] 2 All ER 1600 (solicitors had a lien for advances made to purchase property when the purchaser had become incapable; in this case the solicitors were subrogated to the vendor's lien).

8 *Christian v Field* (1842) 2 Hare 177.

9 *Worrall v Johnson* (1820) 2 Jac & W 214; *Re Galland* (1885) 31 ChD 296, CA.

10 *Re Broomhead* (1847) 5 Dow & L 52; *Re Muray* [1867] WN 190; *Re Carter, Carter v Carter* (1885) 55 LJ Ch 230; *Re Brockman* [1909] 2 Ch 170 at 175, CA, where the form of order on taxation (now assessment) proper to preserve the lien in this respect was considered. See also *Re Margetts* [1896] 2 Ch 263.

11 *Latham v Hyde* (1832) 1 Cr & M 128. See also the Solicitors Act 1974 s 20; and PARA 589; s 25; and PARA 667.

12 If the work is being done but costs are not due the lien has not yet arisen: see *Re Birmingham, Savage v Stannard* [1959] Ch 523 at 530, [1958] 2 All ER 397 at 401 (the solicitors had no deeds in their possession at

the material time and the question was the incidence of the costs ultimately incurred between beneficiaries in the estate of the deceased client).

13 *Bozon v Bolland* (1839) 4 My & Cr 354 at 358; *Re Taylor, Stileman and Underwood* [1891] 1 Ch 590, CA. Cf the cases cited in PARA 997 note 27.

14 As to the lien on property recovered see PARA 1006 et seq.

UPDATE

998 Extent of retaining lien

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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999. Nature of right.

A solicitor having a retaining lien over property in his possession is entitled to retain the property as against the client and all persons claiming through him and having no better right than the client, until the full amount of the solicitor's assessed costs payable by the client is paid¹. The client has no right to inspect the documents² or to take copies of them³, but delivery of documents which the client requires will be ordered upon payment of the solicitor's costs being secured, as by payment into court⁴, or delivery may be ordered to enable property to which the documents relate to be preserved⁵.

1 *Marsh v Bathoe* (1744) Ridg temp H 256; *Smith v Chichester* (1842) 2 Dr & War 393; *Blunden v Desart* (1842) 2 Dr & War 405; *Molesworth v Robbens* (1845) 2 Jo & Lat 358; *Pelly v Wathen* (1851) 1 De GM & G 16 at 23 per Lord Cranworth LJ; *Re Hawkes, Ackerman v Lockhart* [1898] 2 Ch 1, CA. See also *Hollis v Claridge* (1813) 4 Taunt 807.

2 *Re Biggs and Roche* (1897) 41 Sol Jo 277.

3 *Re Hemsworth, ex p Underwood* (1845) De G 190 at 193.

4 *Re Galland* (1885) 31 ChD 296 at 303; *Re Hanbury, Whitting and Nicholson* (1896) 75 LT 449 (solicitors held to be entitled if the amount of the bill was tendered pending taxation (now assessment) to an undertaking to return documents if any sum was found due to them). Pending taxation (now assessment) an undertaking to produce documents as requisite for the purposes of taxation (now assessment) may be required; *Re Jewitt (No 2)* (1864) 34 Beav 22. If the solicitor's account shows the sum due from him no payment into court is required: *Re Bevan and Whitting* (1864) 33 Beav 439.

5 See *Richards v Platel* (1841) 5 Jur 834; *Re Galland* (1885) 31 ChD 296 at 301 per Chitty J.

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1000. Lien no greater than client's right to retain.

Since the solicitor has no better right to retain the documents or property than his client would have if still in possession of them¹, the existence of a retaining lien is no sufficient answer to an order on the client to produce them². Similarly, a defendant's solicitors in an administration action may be compelled to deliver documents to a receiver appointed in the action³ and solicitors for a party to such an action may be compelled to produce documents to a creditor conducting the action⁴.

A company's solicitor has no lien as against the liquidator on documents required by statute to be kept at a particular place⁵ or which come into his possession after the commencement of a winding up⁶. A solicitor can have no lien as against the official receiver or trustee in bankruptcy over the debtor's books of account⁷ and production or delivery of the debtor's property may be ordered⁸.

A vendor's solicitor has no lien on an engrossment of a conveyance prepared by the purchaser as against him⁹. A mortgagee's solicitor does not acquire as against the mortgagor a lien for costs over the mortgage deeds¹⁰ nor can a mortgagor's solicitor retain deeds as against the mortgagee¹¹, but if the mortgage deed creates a floating security the mortgagor may give to his solicitor a lien before the security becomes a fixed charge¹².

A tenant for life¹³ or trustee at his request¹⁴ cannot create a lien in favour of a solicitor which will be valid against remaindermen. A solicitor for a trustee or a personal representative does not acquire a lien over the beneficial interests, but to the extent to which the solicitor's client is entitled to an indemnity out of the estate the solicitor is entitled to retain documents as against a beneficiary¹⁵. A solicitor for a husband having prepared a marriage settlement has no right to a retaining lien for his costs as against the trustee¹⁶, and in general a solicitor does not acquire a lien in priority to an earlier equity even though he has no notice of it¹⁷.

1 *Furlong v Howard* (1804) 2 Sch & Lef 115; *Re Hawkes, Ackerman v Lockhart* [1898] 2 Ch 1 at 7, CA, per Lindley MR.

2 *Ex p Shaw* (1821) Jac 270 at 272; *Bell v Taylor* (1836) 8 Sim 216; *Ley v Barlow* (1848) 1 Exch 800; *Vale v Oppert* (1875) 10 Ch App 340; *Lewis v Powell* [1897] 1 Ch 678. The position is similar where the solicitor is subpoenaed to produce the document: *Hope v Liddell* (1855) 7 De GM & G 331; cf *Hunter v Leathley* (1830) 10 B & C 858.

3 *Re Caudery, London Joint Stock Bank v Wightman* (1910) 54 Sol Jo 444. See also *Belaney v Ffrench* (1873) 8 Ch App 918; and *Re Rapid Road Transit Co Ltd* [1909] 1 Ch 96 at 100. A receiver does not act on behalf of the company alone but is in the same position as a third party entitled to production of documents as against the client company; thus since solicitors cannot assert a lien against a third party they cannot refuse to produce documents to a receiver on the ground that there is a lien for the company's unpaid costs: *Re Aveling Barford Ltd* [1988] 3 All ER 1019, [1989] 1 WLR 360.

4 *Re Boughton, Boughton v Boughton* (1883) 23 ChD 169; *Re Hawkes, Ackerman v Lockhart* [1898] 2 Ch 1, CA.

5 *Re Capital Fire Insurance Association* (1883) 24 ChD 408, CA; *Re Anglo-Maltese Hydraulic Dock Co Ltd* (1885) 54 LJ Ch 730. Nor can an official liquidator by appointing a solicitor enable the solicitor to acquire a lien which the liquidator cannot himself acquire: *Re Union Cement and Brick Co, ex p Pulbrook* (1869) 4 Ch App 627.

6 *Re Capital Fire Insurance Association* (1883) 24 ChD 408, CA; *Re Rapid Road Transit Co Ltd* [1909] 1 Ch 96; *Re Aveling Barford Ltd* [1988] 3 All ER 1019, [1989] 1 WLR 360.

7 See the Insolvency Act 1986 s 349; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 696.

8 See note 7. See also *Re Toleman and England, ex p Bramble* (1880) 13 ChD 885; and **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

9 *Esdaile v Oxenham* (1824) 3 B & C 225. Cf *Oxenham v Esdaile* (1829) 3 Y & J 262.

10 *Pratt v Vizard* (1833) 5 B & Ad 808 (mortgage not completed); *Wakefield v Newbon* (1844) 6 QB 276 (mortgage money repaid); *Re Llewellyn* [1891] 3 Ch 145. The mortgagee's solicitor has not even a lien for costs for work previously done for the mortgagor: *Re Mosely* (1867) 15 WR 975. Where a solicitor acts for both mortgagor and mortgagee then (1) he cannot upon completion retain the mortgage deed or title deeds as against the mortgagee in the exercise of a lien for a debt or cost due from the mortgagor (*Lawson v Dickenson* (1724) 8 Mod Rep 306; *Re Snell* (1877) 6 ChD 105; *Re Mason and Taylor* (1878) 10 ChD 729 (explicable also on another ground: see *Re Dee Estates Ltd, Wright v Dee Estates Ltd* [1911] 2 Ch 85 at 92, CA)); and (2) after reconveyance he cannot, if the deeds remain in his possession, retain them as against the mortgagor until costs due to him from the mortgagor have been paid (*Barratt v Gough-Thomas* [1951] Ch 242, [1950] 2 All ER 1048, CA, approving *Re Nicholson, ex p Quinn* (1883) 53 LJ Ch 302).

11 *Smith v Chichester* (1842) 2 Dr & War 393. Cf *Barratt v Gough-Thomas* [1951] Ch 242, [1950] 2 All ER 1048, CA. See also note 10.

12 *Brunton v Electrical Engineering Corpn* [1892] 1 Ch 434.

13 *Ex p Nesbitt* (1805) 2 Sch & Lef 279; *Re Stannard's Estate* [1897] 1 IR 415 at 417.

14 *Re Mayhew* (1859) 7 WR 351.

15 *Re Dee Estates Ltd, Wright v Dee Estates Ltd* [1911] 2 Ch 85, CA; *Turner v Letts* (1855) 20 Beav 185 (on appeal 7 De GM & G 243); *Rath v M'Mullan* [1916] 1 IR 349 (Ir CA). See also *Stanlar v Evans* (1886) 34 ChD 470 at 477. The lien referred to is on documents or property in the solicitor's possession, not a charge on the estate: cf *Re Watson* (1884) 53 LJ Ch 305 (lien good against subsequent administrator de bonis non).

16 *Re Lawrance, Bowker v Austin* [1894] 1 Ch 556. However, there may be a trust to pay the costs: see *Re Sadd* (1865) 34 Beav 650.

17 *Pelly v Wathen* (1851) 1 De GM & G 16 at 23; *Francis v Francis* (1854) 5 De GM & G 108.

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1001. Persons against whom retaining lien is available.

Although a retaining lien is not greater than the client's right to retain¹, the lien is available against all persons claiming through but having no greater right than the client and thus is available against his personal representatives² or trustee in bankruptcy³ or, in the case of a company, as against the liquidator in respect of costs incurred before the liquidation⁴.

¹ See PARA 1000.

² *Re Watson* (1884) 53 LJ Ch 305 (administrator de bonis non; lien claimed in respect of costs due from testator and executor). See also *Blunden v Desart* (1842) 2 Dr & War 405.

³ *Lambert v Buckmaster* (1824) 2 B & C 616; *Re Hemsworth, ex p Underwood* (1845) De G 190; *Re Leah, ex p Jabet* (1860) 2 LT 72; *Re Watters* (1881) 7 LR Ir 531. See also *Re Austin, ex p Yalden* (1876) 4 ChD 129, CA (new trustee change of solicitors).

⁴ *Re Capital Fire Insurance Association* (1883) 24 ChD 408, CA; *Re Rapid Road Transit Co* [1909] 1 Ch 96; *Re Aveling Barford Ltd* [1988] 3 All ER 1019, [1989] 1 WLR 360.

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1002. Transmission of retaining lien.

A retaining lien is a transmissible right and thus passes to the solicitor's personal representatives¹ or may be assigned with the right to the costs which it secures². The dissolution of a firm of solicitors amounts to a discharge by the solicitors of the clients who retained the firm³ and, accordingly, the lien of the solicitors is affected in the same way as if they had withdrawn from the retainer⁴.

1 *Bull v Faulkner* (1848) 2 De G & Sm 772. An assignee of costs stands in no better position than the assignor: *Re Smith* (1861) 4 LT 43 at 44 per Kindersley V-C.

2 *Magrath v Muskerri* (1787) 1 Ridg Parl Rep 469 at 476; *Redfearn v Sowerby* (1818) 1 Swan 84; *Swabey v Dickson* (1848) 11 LTOS 308. Cf *Kellett v Kelly* (1842) 5 I Eq R 34; *Allen v Jervoise* (1847) 11 I Eq R 583.

3 *Griffiths v Griffiths* (1843) 2 Hare 587; *Rawlinson v Moss* (1861) 30 LJ Ch 797. As to the termination of retainer see PARA 781.

4 As to the effect of taking in a new partner see PARA 997 note 1.

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1003. Effect of change of solicitors.

In the event of a change of solicitors in the course of an action, the former solicitor's retaining lien is not taken away but his rights in respect of it may be modified according to whether he discharges himself or is discharged by the client¹. If he is discharged by the client otherwise than for misconduct² he cannot, so long as his costs are unpaid, be compelled to produce or hand over the papers³ even in a divorce case⁴. If, on the other hand, he discharges himself, he may be ordered to hand over the papers to the new solicitor on the new solicitor's undertaking⁵ to hold them without prejudice to his lien, to return them intact after the action is over and to allow the former solicitor access to them in the meantime and if necessary to prosecute the proceedings in an active manner⁶.

1 *Bozon v Bolland* (1839) 4 My & Cr 354 at 358; *Re Rapid Road Transit Co* [1909] 1 Ch 96.

2 See *Hannaford v Hannaford* (1871) 24 LT 86; *Re Smith* (1841) 4 Beav 309 (conduct amounting to a discharge by the solicitor).

3 *Lord v Wormleighton* (1822) Jac 580; *Steele v Scott* (1828) 2 Hog 141; *Bozon v Bolland* (1839) 4 My & Cr 354 at 358; *Re Moss* (1866) LR 2 Eq 345; *Re Faithfull, Re London Brighton and South Coast Rly Co* (1868) LR 6 Eq 325; *Kettlewell v Barstow* (1872) 20 WR 621; *Re Austin, ex p Yalden* (1876) 4 ChD 129, CA; *Pilcher v Arden, Re Brook* (1877) 7 ChD 318, CA; *Newington Local Board v Eldridge* (1879) 12 ChD 349, CA; *Austin v Macnamara & Co* (1895) 40 Sol Jo 71, CA. See also *Webster v Le Hunt* (1861) 9 WR 804. In all proceedings of a representative character a party's solicitor may be ordered to deliver up ('subject to his lien') documents which have come into his hands for the purposes of the proceedings without regard to the question whether he has been discharged by the client or has discharged himself: *Ross v Laughton* (1813) 1 Ves & B 349; *Simmonds v Great Eastern Rly Co* (1868) 3 Ch App 797; *Belaney v Ffrench* (1873) 8 Ch App 918; *Re Boughton, Boughton v Boughton* (1883) 23 ChD 169; *Boden v Hensby* [1892] 1 Ch 101; *Dessau v Peters, Rushton & Co Ltd* [1922] 1 Ch 1. This rule has been described as arbitrary and ill-defined (*Re Rapid Road Transit Co* [1909] 1 Ch 96 at 102), but it rests on the principle that the solicitor has no right greater than his client and that his client's right does not avail against the other persons interested (see PARAS 999-1000); yet this does not account for the distinction between documents which do or do not come into the solicitor's hands before eg a liquidation and costs which are incurred before or after such time (see PARA 1000; and **COMPANIES**). If a solicitor is discharged by the client otherwise than for misconduct the solicitor is under no obligation to deliver or to produce or to allow inspection of the papers for the benefit of the client and is entitled to hold the papers until the bill of costs has been paid: *Leo Abse & Cohen v Evan G Jones (Builders) Ltd* (1984) 128 Sol Jo 317, 81 LS Gaz R 1684, CA.

4 *Hughes v Hughes* [1958] P 224, [1958] 3 All ER 179, CA.

5 The court has no jurisdiction to relieve a solicitor of such an undertaking given to another solicitor: *Hughes v Hughes* [1958] P 224, [1958] 3 All ER 179, CA.

6 The court's power to order that the former solicitors hand over the papers relating to a case to the new solicitors is not to be exercised automatically. It is a matter of discretion to be exercised judicially depending on the circumstances of the case: *A v B* [1984] 1 All ER 265; and see *Commerell v Poynton* (1818) 1 Swan 1; *Moir v Mudie* (1823) 1 Sim & St 282; *Colegrave v Manley* (1823) Turn & R 400; *Heslop v Metcalfe* (1837) 3 My & Cr 183; *Bozon v Bolland* (1839) 4 My & Cr 354 at 358; *Griffiths v Griffiths* (1843) 2 Hare 587; *Wilson v Emmett* (1854) 19 Beav 233; *Rawlinson v Moss* (1861) 30 LJ Ch 797; *Re H--*, *Walker v Beanlands, Beanlands v Walker* (1866) 15 WR 168; *Robins v Goldingham* (1872) LR 13 Eq 440; *Hutchinson v Norwood (No 2)* (1886) 54 LT 842; *Bluck v Lovering & Co* (1886) 35 WR 232, DC; *Re Wonthner & Sons, ex p Scheyer* (1888) 52 JP 183, DC; *Gamlen Chemical Co (UK) Ltd v Rochem Ltd* [1980] 1 All ER 1049, [1980] 1 WLR 614, CA; *Ismail v Richards Butler (a firm)* [1996] QB 711, [1996] 2 All ER 506. A London agent may similarly be ordered to deliver deeds to the country solicitors: *Re Smith* (1841) 4 Beav 309. As to legal agents see further PARA 1022 et seq.

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1004. Priorities of successive solicitors.

The priorities of successive solicitors employed by the same client in regard to a retaining lien or a lien on property recovered¹ are regulated as follows.

In the winding up of companies² and in a debenture holder's action the rights of the respective solicitors to payment and consequently to a lien upon documents rank *pari passu*³.

In an action in the Chancery Division, the rule is that the solicitor who actually conducts the action to its conclusion has the first lien upon any money recovered or preserved, but subject to this lien the court will grant the solicitor employed at an earlier stage of the action a charging order in respect of his costs⁴. Where the first solicitor receives the whole of the costs he must pay over the second solicitor's share without deduction in respect of any set-off to which he may be entitled as between himself and his client⁵. The fact that one solicitor pays off the other solicitor's claim does not give the other solicitor any lien in respect of the amount so paid⁶. Where the subject of a lien is converted into money and the amount paid into court, the liens are satisfied out of the fund according to their priorities⁷.

The delivery over of papers 'subject' or 'without prejudice' to a lien gives the person handing the papers over no priority⁸. If it is intended to preserve the lien as a prior charge an undertaking to that effect must be insisted upon⁹.

1 As to property recovered see PARA 1006 et seq. As to the priority of charging orders see PARA 1018.

2 *Re Audley Hall Cotton Spinning Co* (1868) LR 6 Eq 245; *Re Dominion of Canada Plumbago Co* (1884) 27 ChD 33, CA. See further **COMPANIES** vol 14 (2009) PARA 611.

3 *Batten v Wedgwood Coal and Iron Co* (1884) 28 ChD 317.

4 *Cormack v Beisly* (1858) 3 De G & J 157; *Re Wadsworth, Rhodes v Sugden* (1886) 34 ChD 155; *Re Knight, Knight v Gardner* [1892] 2 Ch 368; *Hyde v White* [1933] P 105. As to charging orders see PARA 1011 et seq. As to the right of a solicitor to retain papers upon being discharged by his client see PARA 1003.

5 *Re Barnard, ex p Bailey and Hope* (1851) 14 Beav 18. As to the rights of the solicitors inter se see *Mornington v Wellesley* (1857) 4 Jur NS 6, where the second solicitor having accepted a gross sum without taxation (now assessment), the first solicitor (having obtained no charging order as the case was before the Solicitors Act 1860 (repealed)) had no claim against the fund but only against the second solicitor.

6 *Irving v Viana* (1827) 2 Y & J 70 (particular lien); *Christian v Field* (1842) 2 Hare 177 at 183-184 (retaining lien).

7 *Re Walker, Meredith v Walker* (1893) 68 LT 517.

8 *Batten v Wedgwood Coal and Iron Co* (1884) 28 ChD 317; *Re Capital Fire Insurance Association* (1883) 24 ChD 408, CA.

9 *Re Gloucester, Aberystwyth and Central Wales Rly Co* (1860) 8 WR 175; *Re Audley Hall Cotton Spinning Co* (1868) LR 6 Eq 245; *Gibbs v Tredwell, Re Armstrong* (1886) 30 Sol Jo 181, CA. A solicitor will normally be in a position to demand such an undertaking where he is being discharged by the client: see PARA 1003.

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1005. Discharge of retaining lien.

A retaining lien may be discharged¹ in one or other of the following ways:

- 1433 (1) by the solicitor receiving payment of the costs in respect of which it arises² although it is not discharged by the solicitor obtaining judgment³ or a charging order⁴ for his costs;
- 1434 (2) by the solicitor parting with possession⁵ of the documents over which the lien is claimed, but not if possession was given to an agent of a third person subject to the lien⁶, or where papers are handed to an arbitrator to enable him to draw up his award⁷ or are produced to the court on request⁸, or where after dissolution of a firm a former partner takes away deeds which are subject to a lien⁹, or where documents are passed by the solicitor to a firm of solicitors replacing him to hold to his order or for his account¹⁰;
- 1435 (3) by waiver where the solicitor conducts himself in a manner inconsistent with the retention of his lien, for instance by taking security for his costs on the property to which the documents relate¹¹, or by taking a negotiable instrument payable on demand¹² or in three years¹³, or by effecting for a client a security to perfect which the client should be given possession of the documents¹⁴. There is in general a presumption that the lien is abandoned if the solicitor takes the security for the costs secured by the lien without explaining that he is entitled to a lien which he is not abandoning¹⁵ but there is no waiver if the solicitor expressly reserves his lien¹⁶. The arrest of a vessel belonging to a client and to which papers relate is not inconsistent with maintenance of a lien and does not imply an intention to waive it¹⁷. Where the security and the lien are not inconsistent, as where the security relates to some particular part of the cost only¹⁸, the lien is not discharged. A solicitor's retaining lien on an insurance policy is valid against a subsequent assignee of the policy who has given notice of the assignment to the insurers even though the solicitor has given no such notice of his lien¹⁹;
- 1436 (4) by proving in bankruptcy or in a winding up the amount of the costs without valuing or mentioning the lien²⁰.

1 As to the discharge or extinction of lien generally see **LIEN** vol 68 (2008) PARAS 850-854, 882-886.

2 *Re Emma Silver Mining Co, Re Turner* (1875) 24 WR 54.

3 *Re Aikin's Estate* [1894] 1 IR 225. Cf *Hector v Jolliffe* (1842) 6 Jur 120.

4 *Re Lumley* (1892) 37 Sol Jo 83.

5 *Re Phoenix Life Assurance Co, Howard and Dollman's Case* (1863) 1 Hem & M 433.

6 *Watson v Lyon* (1855) 7 De GM & G 288.

7 *Whalley v Halley* (1829) 8 LJOSKB 6.

8 *Re Till, ex p Parsons* (1871) 19 WR 325.

9 *Re Carter, Carter v Carter* (1885) 55 LJ Ch 230.

10 *Caldwell v Sumpters* [1972] Ch 478, [1972] 1 All ER 567, CA.

- 11 *Re Morris* [1908] 1 KB 473 at 477, CA; *Curry v Rea* [1937] NI 1 (NI CA).
- 12 *Robarts v Jefferys* (1830) 8 LJOS Ch 137.
- 13 *Cowell v Simpson* (1809) 16 Ves 275.
- 14 See PARA 1000 note 10; *Hicks v Keate* (1839) 3 Jur 1024; *Fitzgerald v Bermingham* (1842) 1 Con & Law 405.
- 15 *Re Taylor, Stileman and Underwood* [1891] 1 Ch 590 at 597, CA; *Bissell v Bradford and District Tramways Co Ltd* (1893) 9 TLR 337, CA; *Re Douglas, Norman & Co* [1898] 1 Ch 199; *Curry v Rea* [1937] NI 1 (NI CA). See also *Re Morris* [1908] 1 KB 473 at 478, 482-483.
- 16 Ie because the discharge of the lien or its preservation depends on the intention of the parties: see *Re Taylor, Stileman and Underwood* [1891] 1 Ch 590 at 597, CA.
- 17 *A v B* [1984] 1 All ER 265.
- 18 *Balch v Symes* (1823) 1 Turn & R 87; *Re Morris* [1908] 1 KB 473, CA.
- 19 *West of England Bank v Batchelor* (1882) 51 LJ Ch 199.
- 20 Ie under the Insolvency Act 1986: see *Re Safety Explosives Ltd* [1904] 1 Ch 226, CA (amendment of proof). Cf *Re Tarleton, ex p Hornby* (1819) Buck 351; *Re Aubusson, ex p Solomon* (1821) 1 Gl & J 25. See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY; COMPANIES** vol 14 (2009) PARA 611.

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C. CASE LAW ON PROPERTY OR FUNDS RECOVERED

1006. Particular lien on property recovered.

Apart from statute¹ a solicitor has at common law a lien which may be actively enforced² over a fund or the proceeds of a judgment³ recovered for the client in the course of litigation or arbitration by the solicitor's exertions⁴, but not over the fruit of negotiation without litigation⁵. The existence of the particular lien does not depend on any proprietary or possessory relationship of the solicitor to the property⁶. This lien, although always referred to as a 'lien', is more accurately described as a mere right to ask for the court's intervention for the solicitor's protection when, having obtained judgment for his client, he finds that there is a probability of the client depriving him of his costs⁷. It is a right to ask the court to charge the property in favour of the solicitor and until that is done the solicitor has no right to the money⁸.

The lien is a particular lien⁹. It is not therefore available for the general balance of account between the solicitor and the client¹⁰ but extends only to costs of the proceedings in which the property is recovered¹¹, including the costs of protecting the solicitor's right to those costs¹², of establishing the solicitor's retainer if it is disputed¹³ and of matters incidental to the recovery¹⁴. The lien may be asserted by the solicitor although his right to recover the costs may be barred by lapse of time¹⁵.

1 *Re Born, Curnock v Born* [1900] 2 Ch 433. See also *Re Clarke's Settlement Fund* [1911] WN 39 at 40.

2 *Bozon v Bolland* (1839) 4 My & Cr 354 at 357-358.

3 *Re Sullivan v Pearson, ex p Morrison* (1868) LR 4 QB 153 at 156.

4 *Ex p Price* (1751) 2 Ves Sen 407; *M'Bride v Clarke* (1839) 1 I Eq R 203; *Re Wadsworth, Rhodes v Sugden* (1886) 34 ChD 155 at 157.

5 *Megeurditchian v Lightbound* [1917] 2 KB 298, CA.

6 *Halvanon Insurance Co Ltd v Central Reinsurance Corp'n* [1988] 3 All ER 857, [1988] 1 WLR 1122; see also *Prekookeanska Plovdiva v LNT Lines Srl* [1988] 3 All ER 897, [1989] 1 WLR 753.

7 *Ross v Buxton* (1889) 42 ChD 190 at 200; *Mason v Mason and Cottrell* [1933] P 199 at 205, CA; *Re Fuld (No 4)* [1968] P 727, [1967] 2 All ER 649.

8 *James Bibby Ltd v Woods and Howard* [1949] 2 KB 449, [1949] 2 All ER 1, DC.

9 *Verity v Wyld, Re Downes* (1859) 4 Drew 427. As to particular liens see **LIEN** vol 68 (2008) PARAS 838 et seq.

10 *Bozon v Bolland* (1839) 4 My & Cr 354 at 357-358; *Mackenzie v Mackintosh* (1891) 64 LT 706, CA; *Smith v Betty* [1903] 2 KB 317 at 322, CA.

11 *Lann v Church* (1820) 4 Madd 391; *Stephens v Weston* (1824) 3 B & C 535; *Watson v Maskell* (1834) 1 Bing NC 366; *Hall v Laver* (1842) 1 Hare 571; *Re Bayly's Estate, ex p Humphrey* (1860) 12 I Ch R 315. If part of the costs have already been paid by the client the lien extends only to the balance: *Cain v Adams* (1836) 5 LJKB 252.

12 *Lucas v Peacock* (1846) 9 Beav 177.

13 *Re Meter Cabs Ltd* [1911] 2 Ch 557.

14 *Irving v Viana* (1827) 2 Y & J 70; *Sympson v Prothero* (1857) 26 LJ Ch 671; *Re Meter Cabs Ltd* [1911] 2 Ch 557.

15 *Higgins v Scott* (1831) 2 B & Ad 413. Cf *Re Born, Curnock v Born* [1900] 2 Ch 433 (delay in applying to enforce the lien is unimportant if meanwhile third persons have not acquired rights). See **LIEN** vol 68 (2008) PARAS 820; and see generally **LIMITATION PERIODS**.

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1007. Extent of lien on property recovered.

A lien on property recovered does not attach to real property¹, nor generally to maintenance payments², nor to money which ought to be paid to a receiver in an action and comes to the solicitor's hands as solicitor for the claimant³ or with a view to paying it over to the receiver⁴ but, with these exceptions, it applies to property of every description⁵ such as money payable under a judgment⁶ or an award⁷ (including costs ordered to be paid to the client⁸ or the proceeds of an execution in the hands of the sheriff⁹), money paid into court whether as security for costs¹⁰ or by way of defence¹¹ or otherwise¹² and money received by way of compromise¹³.

The property must, however, have been recovered or preserved in consequence of the solicitor's exertions¹⁴ and by means of litigious or arbitration proceedings¹⁵, and the solicitor must have been acting on behalf of the person against whom the lien is claimed¹⁶. The lien can apply to money held in a client account and it is wrong in principle for such money to be included within the ambit of an injunction freezing the assets of the client¹⁷. The lien can be exercised against the client only¹⁸ and it attaches to the property only to the extent of the client's interest in it¹⁹. The solicitor has no greater right than his client²⁰ and takes subject to all the equities between his client and the other parties interested in the property²¹.

The solicitor has no right to a lien if the contract of retainer between him and the client is void for illegality²².

1 *Shaw v Neale* (1858) 6 HL Cas 581.

2 *Cross v Cross* (1880) 43 LT 533; *Leete v Leete* (1879) 48 LJP 61. Contrast *Ex p Bremner* (1866) LR 1 P & D 254.

3 *Re Birt, Birt v Burt* (1883) 22 ChD 604.

4 *Wickens v Townshend* (1830) 1 Russ & M 361.

5 See PARA 1013 et seq.

6 *Slater v Sunderland Corpn* (1863) 33 LJQB 37.

7 *Ormerod v Tate* (1801) 1 East 464; *Cowell v Betteley* (1834) 10 Bing 432; *Jones v Turnbull* (1837) 2 M & W 601; *Re Meter Cabs Ltd* [1911] 2 Ch 557 at 562. See also *Dees v Great North of England Rly Co* (1846) 7 LTOS 406.

8 *Ex p Bryant* (1815) 1 Madd 49; *Aspinall v Stamp* (1824) 3 B & C 108; *O'Brien v Lewis* (1863) 3 De GJ & Sm 606; *Campbell v Campbell and Lewis* [1941] 1 All ER 274, CA; and see *Pounset v Humphreys* (1837) Coop Pr Cas 142.

9 *Griffin v Eyles* (1789) 1 Hy Bl 122; *Re Bank of Hindustan, China and Japan, ex p Smith* (1867) 3 Ch App 125.

10 *Hall v Hall* [1891] P 302, CA.

11 See *Emden v Carte* (1881) 19 ChD 311, CA.

12 *M'Bride v Clarke* (1839) 1 I Eq R 203.

13 *Davies v Lowndes* (1847) 3 CB 808; *Slater v Sunderland Corpn* (1863) 3 New Rep 164; *Ross v Buxton* (1889) 42 ChD 190 at 195; and see PARA 1010.

14 *Hodgens v Kelly* (1826) 1 Hog 388; *Townsend v Reade, Dooley v Reade* (1835) 4 LJ Ch 233; *Lord v Colvin* (1862) 2 Drew & Sm 82 at 92-93. Cf *Stretton v London and North Western Rly Co* (1855) 16 CB 40. It is immaterial whether the solicitor acted for the claimant or for the defendant: *Townsend v Reade, Dooley v Reade*. A subsequent solicitor who pays the costs of a solicitor actually recovering the property does not succeed to that solicitor's lien over the property: *Irving v Viana* (1827) 2 Y & J 70. As to priority between successive solicitors see PARA 1004.

15 *Meguerditchian v Lightbound* [1917] 2 KB 298, CA.

16 *Re Clark, ex p Newland* (1876) 4 ChD 515; *Chick v Nicholls* (1877) 26 WR 231.

17 *Prekookeanska Plovidba v LNT Lines Srl* [1988] 3 All ER 897, [1989] 1 WLR 753 (where it was held that the money in the client's account was not really the client's money at all but only held by the solicitors in that account because of the mandatory requirements of the solicitors' accounts rules). However, when, as a condition of leave to defend, a defendant pays money into an account held by the claimant's and the defendant's solicitors, the claimant's solicitors do not have a lien over the account in respect of unpaid fees. A solicitor has an equity in the fund and has the right to have his interest taken into account by the court when any sum is paid out of the account to the claimants: *Halvanon Insurance Co Ltd v Central Reinsurance Corpn* [1988] 3 All ER 857, [1988] 1 WLR 1122.

18 *Francis v Francis* (1854) 5 De GM & G 108. The death (see *Lloyd v Mason* (1845) 4 Hare 132) or the bankruptcy of the client does not affect a lien which has already attached. The lien is available against a minor (*Re Wright's Trust, Wright v Sanderson* [1901] 1 Ch 317, CA) or a person mentally disordered (*Ex p Price* (1751) 2 Ves Sen 407).

19 *Verity v Wyld, Re Downes* (1859) 4 Drew 427; *Chick v Nicholls* (1877) 26 WR 231.

20 *Re Union Cement & Brick Co* (1872) 26 LT 240; *Re Harrauld, Wilde v Walford* (1884) 53 LJ Ch 505, CA.

21 *Taylor v Popham, Monke v Taylor* (1808) 15 Ves 72; *Bawtree v Watson* (1838) 2 Keen 713; *Gwynn v Crous* (1845) 7 I Eq R 274.

22 *Re Trepca Mines Ltd (No 2)* [1962] Ch 511 at 529-530, [1962] 1 All ER 755 at 767; affd [1963] Ch 199, [1962] 3 All ER 351, CA (champertous agreement).

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1008. Effect of set-off.

Under its inherent jurisdiction¹, the High Court has a discretion to allow a judgment for costs or for damages to be set off² against a judgment for costs or for damages without regard to any lien of a solicitor on any such judgment, the lien thus extending only to the ultimate balance³. In exercising this discretion the court will not refuse the set-off if it would be just as between the litigants themselves to allow it⁴. The Court of Appeal may allow the respondent's costs of an unsuccessful appeal to be set off against money paid into court in the action⁵, and the House of Lords has a discretion to allow a set-off of costs incurred in an appeal to that House against costs due under a judgment of the Court of Appeal, but that discretion will not be exercised on a separate application after final judgment has been given⁶. A set-off of judgments obtained in county courts or in a county court and in the High Court is allowed in accordance with the practice of the High Court⁷.

1 *Edwards v Hope* (1885) 14 QBD 922, CA; *Reid v Cupper* [1915] 2 KB 147, CA; *Puddephatt v Leith (No 2)* [1916] 2 Ch 168 at 173-174.

2 For the right of set-off generally see **CIVIL PROCEDURE** vol 11 (2009) PARA 634 et seq.

3 *Edwards v Hope* (1885) 14 QBD 922, CA; *Goodfellow v Gray* [1899] 2 QB 498 (charging order); *Reid v Cupper* [1915] 2 KB 147, CA; *Puddephatt v Leith (No 2)* [1916] 2 Ch 168; *Young v Mead* [1917] 2 IR 258; *Mason v Mason and Cotterell* [1933] P 199 at 205, CA; *Re A Debtor (No 21 of 1950) (No 2)*, ex p *Petitioning Creditors v Debtor* [1951] Ch 612, [1951] 1 All ER 600 (the court has a discretion to allow a set-off and thus power to grant a stay of execution if it thinks fit). The costs of proceedings on a special case stated by an arbitrator may be set off against the costs of the arbitration, the proceedings being continuous notwithstanding the solicitor's lien: *Welch v Royal Exchange Assurance* [1939] 3 All ER 305.

4 *Young v Mead* [1917] 2 IR 258, following *Puddephatt v Leith (No 2)* [1916] 2 Ch 168 at 180. Cf *Ogle v Mills* [1931] NI 26, where a set-off against a worthless debt was not allowed.

5 *Knight v Knight* [1925] Ch 835, CA. Cf *Hall v Hall* [1891] P 302, CA, where a fund was paid into court to secure a wife's costs and it was said that the solicitor ought not lightly to be deprived of his costs out of this fund.

6 *Russell v Russell* [1898] AC 307, HL.

7 See the County Courts Act 1984 s 72; and **COURTS**. As to set-off in separate proceedings under this practice see *Ward v Haddrill* [1904] 1 KB 399, DC.

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1009. Enforcement of lien on property recovered.

The lien on property recovered, being in fact a right to ask for the court's intervention¹, may be actively enforced². The application may conveniently be an application for a charging order under the Solicitors Act 1974³ or at common law⁴ but the solicitor may apply to the court for an injunction restraining his client from receiving payment without notice to himself⁵.

Apart from applying to the court, the solicitor may protect his lien, where money is payable to his client either under an order to pay costs⁶ or a judgment⁷ or compromise⁸ by giving notice of his lien to the party liable to pay, or his solicitors, who thereafter will be liable to pay again to the solicitor, if payment is made initially without regard to the solicitor's claim⁹. If the money in respect of which the lien is claimed is already in the solicitor's hands he may retain out of it the amount of his costs and pay over the balance to the client¹⁰.

1 See PARA 1006.

2 See *Bozon v Bolland* (1839) 4 My & Cr 354 at 357-358. See also *Wiedemann v Walpole (No 2)* (1891) 56 JP 5, CA, where the court refused an application to be heard in opposition to a motion for a new trial.

3 *Re Born, Curnock v Born* [1900] 2 Ch 433. As to charging orders under the Solicitors Act 1974 s 73 see PARA 1011 et seq.

4 *Campbell v Campbell and Lewis* [1941] 1 All ER 274, CA.

5 *Hobson v Shearwood* (1845) 8 Beav 486 (stop order); *Lloyd v Jones* (1879) 40 LT 514. However, as against an opposite party who has been ordered to pay a sum to the solicitor's client, the solicitor is not entitled to an order to pay the money to the solicitor to satisfy his lien: *Lloyd v Mansell* (1853) 22 LJQB 110.

6 *Read v Dupper* (1795) 6 Term Rep 361; *Ex p Bryant* (1815) 1 Madd 49 (release of costs after notice held to be ineffectual).

7 *Ormerod v Tate* (1801) 1 East 464.

8 *White v Pearce* (1849) 7 Hare 276; *Ross v Buxton* (1889) 42 ChD 190 at 202, where the defendant's solicitors were held liable as notice was given to them, but the defendant, who received no notice and no money, was not liable.

9 *Welsh v Hole* (1779) 1 Doug KB 238; *Read v Dupper* (1795) 6 Term Rep 361; *Ormerod v Tate* (1801) 1 East 464; *Ross v Buxton* (1889) 42 ChD 190.

10 See *Watson v Maskell* (1834) 1 Bing NC 366; *Hanson v Reece* (1857) 27 LJ Ch 118; *Re Blake, Clutterbuck v Bradford* [1945] Ch 61, [1945] 1 All ER 1, CA, where solicitors were held to be entitled to obtain a charging order on the amount of taxed costs as property recovered.

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1010. Effect of compromise of action.

A solicitor's lien against property recovered may be affected by the compromise of the action. For the purpose of preserving the lien, the court does not interfere with a compromise made in good faith¹, whether the damages sought to be affected are liquidated² or unliquidated³.

It must, however, be clear that the compromise is made honestly and not with the intention of cheating the solicitor of his proper charges⁴. If the compromise is a collusive one entered into between the claimant and the defendant specifically for the purpose of depriving the solicitor of his lien, the court interferes for the solicitor's protection⁵. In such a case the court may order payment of the solicitor's costs⁶; or that a bill of exchange be delivered up to the solicitor⁷; or may permit the solicitor to continue the proceedings for the purpose of recovering costs⁸; or, if a stay of proceedings on a compromise is asked for, may attach conditions upon granting the stay⁹.

1 *Morse and Holder v Cooke and Morse* (1824) 13 Price 473; *M'Pherson v Allsop* (1839) 8 LJ Ex 262; *Quested v Callis* (1842) 1 Dowl NS 888; *Brunsdon v Allard* (1859) 2 E & E 19; *Re Sullivan v Pearson, ex p Morrison* (1868) LR 4 QB 153.

2 *Brunsdon v Allard* (1859) 2 E & E 19.

3 *Re Toverly v Payne, ex p Hart* (1830) 1 B & Ad 660. For a discussion of solicitors' liens and statutory rights see *Halvanon Insurance Co Ltd v Central Reinsurance Corp'n* [1988] 3 All ER 857, [1988] 1 WLR 1122.

4 *Chapman v Haw* (1808) 1 Taunt 341; *Jordan v Hunt* (1835) 3 Dowl 666; *The Hope* (1883) 8 PD 144 at 146, CA; *Reynolds v Reynolds* (1909) 26 TLR 104, CA; but see *Price v Crouch* (1891) 60 LJQB 767.

5 See *Bovil v Podmore* (1829) 7 De GM & G at 27 (compromise of suit for specific performance; payment of purchase money restrained until lien satisfied).

6 *Re Williams v Lloyd, ex p Games* (1864) 3 H & C 294; *Re Sullivan v Pearson, ex p Morrison* (1868) LR 4 QB 153 at 156; *Price v Crouch* (1891) 60 LJQB 767; *Re Margetson and Jones* [1897] 2 Ch 314 at 321.

7 *Gould v Davis* (1831) 1 Cr & J 415.

8 *Nelson v Wilson* (1830) 6 Bing 568; *Anon* (1830) 9 LJOS Ex 6; *Hubert v Steiner* (1835) 4 LJCP 233; *Price v Crouch* (1891) 60 LJQB 767. Cf *Young v Redhead* (1833) 2 Dowl 119, Sx Ch. In practice the order for payment will be made in preference to this order: *Re Margetson and Jones* [1897] 2 Ch 314 at 321.

9 *Saunderson v Consolidated Credit and Mortgage Corp'n Ltd* (1890) 6 TLR 404.

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D. STATUTORY LIEN AND CHARGING ORDERS

1011. Statutory jurisdiction to make charging orders.

Any court¹ in which a solicitor has been employed² to prosecute or defend any suit, matter or proceeding may at any time:

- 1437 (1) declare³ that the solicitor is entitled to a charge⁴, on any property⁵ recovered or preserved⁶ through his instrumentality, for his assessed costs⁷ in reference to that suit, matter or proceeding⁸; and
- 1438 (2) make such orders for the assessment of those costs and for raising money to pay or for paying them out of the property recovered or preserved as the court thinks fit⁹.

All conveyances and acts done to defeat or operating to defeat¹⁰ that charge are void as against the solicitor except in the case of a conveyance to a bona fide purchaser for value without notice¹¹.

1 As to the courts which may make charging orders see PARA 1019. The court must be a civil court: *Re Humphreys, ex p Lloyd-George and George* [1898] 1 QB 520 at 525, CA. For the power of a particular court, eg a judge exercising bankruptcy jurisdiction, to make the order see PARA 1019.

2 This includes acting on behalf of a minor where the original retainer was by the next friend and a charging order can be made if the minor adopts the proceedings: *Bonser v Bradshaw* (1860) 30 LJ Ch 159 (on appeal (1862) 10 WR 481); *Baile v Baile* (1872) LR 13 Eq 497; cf *Pritchard v Roberts* (1873) LR 17 Eq 222. It is necessary to consider the position and interest of the person employing the solicitor because the interest of that person may be a factor in deciding upon a particular exercise of the discretion over the order: *Jackson v Smith, ex p Digby* (1884) 53 LJ Ch 972 at 975. The repudiation by a minor of proceedings relates back to their commencement: *Dunn v Dunn* (1855) 7 De GM & G 25 at 29.

3 The court's power is discretionary: *Re Humphreys, ex p Lloyd-George and George* [1898] 1 QB 520, CA; *Re Born, Curnock v Born* [1900] 2 Ch 433; *Re Turner, Wood v Turner* [1907] 2 Ch 539, CA; *Re Cockrell's Estate* [1912] 1 Ch 23, CA; *Re Debtor (No 29 of 1931)*, *Wilde v Petitioning Creditors and Debtor* (1934) 103 LJ Ch 303. In the exercise of its discretion the court must also have regard to the rights of the client: *Re Fuld (No 4)* [1968] P 727, [1967] 2 All ER 649. It is 'otiose and inappropriate' to make a charging order where the property is already under the control of the court: *Halvanon Insurance Co Ltd v Central Reinsurance Corp* [1988] 3 All ER 857 at 863, [1988] 1 WLR 1122 at 1130.

4 As to the priority of the charge see PARA 1018.

5 The property of any kind: *Foxon v Gascoigne* (1874) 9 Ch App 654 at 660; *Birchall v Pugin* (1875) LR 10 CP 397 at 399. In this respect the power to make a charging order is more extensive than the power to protect the lien since the lien does not extend to realty: see PARA 1007; and *Wilson v Hood* (1864) 3 H & C 148 at 151. 'Property' under the Solicitors Act 1974 s 73(1) includes an order for untaxed costs: *Fairfold Properties Ltd v Exmouth Docks Co Ltd (No 2)* [1993] Ch 196, [1992] 4 All ER 289.

6 As to the recovery or preservation of property see PARA 1016.

7 As to the meaning of 'costs' see PARA 835 note 6.

8 Solicitors Act 1974 s 73(1)(a). The Solicitors Act 1974 s 73(1)(a) is prospectively amended by the Legal Services Act 2007 Sch 16 para 68(a) which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967. Where a solicitor takes a security over a client's property, some

feature of which is incompatible with a charge under the Solicitors Act 1973 s 73, then the solicitor is deemed to have waived the right to such a charge: see *Clifford Harris & Co v Solland International Ltd* [2005] EWHC 141 (Ch), [2005] 2 All ER 334.

9 Solicitors Act 1974 s 73(1)(b). See further PARA 1021. The Solicitors Act 1974 s 73(1)(b) is prospectively amended by the Legal Services Act 2007 Sch 16 para 68(b) which reflects the replacement of taxation of costs with assessment of costs.

10 Attachment of debts by a garnishee order is an 'act operating to defeat': see *Birchall v Pugin* (1875) LR 10 CP 397; *Hamer v Giles* (1879) 11 ChD 942; *Shippey v Grey* (1880) 49 LJQB 524, CA; *Dallow v Garrold, ex p Adams* (1884) 14 QBD 543. So is an assignment of the property 'recovered or preserved': *Cole v Eley* [1894] 2 QB 350, CA; *The Paris* [1896] P 77. See also PARA 1018.

11 Solicitors Act 1974 s 73(1). No order may be made under s 73(1) if the right to recover costs is barred by any statute of limitations: s 73(2). See generally **LIMITATION PERIODS**.

UPDATE

1011 Statutory jurisdiction to make charging orders

NOTES 8, 9--Amendments made by Legal Services Act 2007 Sch 16 para 68 in force 1 January 2010: SI 2009/3250.

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1012. Circumstances in which charging orders should be made.

A solicitor is entitled to a charging order if he satisfies the statutory requirements¹ and he makes out a prima facie case that he will not otherwise obtain his costs². Where there is no question of his being deprived of costs by his conduct, very exceptional circumstances must be shown for depriving him of the opportunity for enforcing his lien³. It is a material point whether the solicitor is entitled to a common law lien⁴ over property to be charged, since an application for a charging order may be regarded as a convenient procedure for enforcing that lien⁵. However, the order will be refused if the solicitor has been guilty of a breach of faith, or has stood by while the property was so dealt with that it would be unjust to third persons to make the order⁶, or has acted in a manner inconsistent with the continuance of the right, as by proving in bankruptcy as an unsecured creditor⁷, or accepting security for the costs⁸, or being privy to an order whereby part of the cost was paid by way of set-off against a debt and the remainder was ordered to be paid out of a fund⁹, or where the costs are barred by any statute of limitation¹⁰. Moreover, the charging order may be refused if the costs are recoverable from another person not interested in the property to be charged¹¹. An order may be granted in respect of a fund even if the fund is lodged before the solicitor is retained¹².

1 le the requirements of the Solicitors Act 1974 s 73: see PARA 1011.

2 *Harrison v Harrison* (1888) 13 PD 180 at 184, CA; *Croghan v Maffett* (1891) 28 LR Ir 97. Cf *Harrison v Cornwall Minerals Rly Co* (1884) 53 LJ Ch 596, where the application was refused as being unnecessary for the solicitor's protection and designed for the client's benefit. It is generally right to make the order unless there is a reason for withholding it: *Dallow v Garrold, ex p Adams* (1884) 13 QBD 543 at 546.

3 *Re Blake, Clutterbuck v Bradford* [1945] Ch 61, [1945] 1 All ER 1; *Customs and Excise Comrs v Hebdson Ltd* [1953] 2 Lloyd's Rep 382 at 413.

4 As to lien generally see **LIEN**.

5 *Re Born, Curnock v Born* [1900] 2 Ch 433, where solicitors applied for a charging order after the commencement of a winding up but nevertheless it was granted because it was held that the order was simply a cheap and speedy way of enforcing a right they had already possessed at common law.

6 *Dallow v Garrold, ex p Adams* (1884) 13 QBD 543 at 545-546; *Higgs v Higgs* [1934] P 95 at 99. For a statement that costs not incurred in good faith should not be charged see *Re Nicholas and Paine, ex p Lovett* (1889) 61 LT 87. Unless new rights intervene delay alone is not a bar: *Re Born, Curnock v Born* [1900] 2 Ch 433 at 435. Cf *The Birnam Wood* [1907] P 1, CA.

7 *Higgs v Higgs* [1934] P 95.

8 *Groom v Cheesewright* [1895] 1 Ch 730 at 733: see PARA 1005.

9 *Re Cockrell's Estate* [1912] 1 Ch 23, CA. The fact that an order for payment of the costs out of trust property has already been made is a ground for refusing a charging order which will afford no greater security: *Re Viney's Trust* (1868) 18 LT 851.

10 See the Solicitors Act 1974 s 73(2).

11 *Harrison v Harrison* (1888) 13 PD 180, CA (husband responsible for wife's costs). Cf *Re Keane, Lumley v Desborough* (1871) LR 12 Eq 115, where the husband was unable to pay the costs. A charging order may, however, be made on property in which the client has no interest: see *Bailey v Birchall* (1865) 2 Hem & M 371; and PARA 1017.

12 *Wimbourne v Fine* [1952] Ch 869, [1952] 2 All ER 681.

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1013. Property charged.

The following property has been held to be chargeable as property recovered or preserved¹:

- 1439 (1) an annual sum secured to a wife on the dissolution of her marriage² or preserved to her by the success of a defence³;
- 1440 (2) money paid into court by way of defence⁴ or under the procedure for summary judgment⁵ or as the proceeds for the sale of a ship under an order made in an Admiralty action⁶;
- 1441 (3) sums recovered by a receiver in a debenture holder's action as the result of proceedings taken by his solicitor⁷;
- 1442 (4) assets of a company preserved by a scheme approved by the court as regards the company's solicitors' costs of the winding up and reconstruction⁸;
- 1443 (5) trust property concerned in an action against the trustee for an account and reconveyance in which a receiver was appointed⁹, or trust property for which a receiver was appointed in an action for execution of the trust¹⁰, or trust property defended by a trustee against a claim adverse to the trust¹¹;
- 1444 (6) the value by which property is acquired the more cheaply as the result of the litigation¹²;
- 1445 (7) money payable as a result of a compromise of an action¹³;
- 1446 (8) the estate of a deceased testator where the solicitor acted for an executor propounding a will which was proved¹⁴, or where an action for administration and the appointment of a receiver was successfully resisted by executors¹⁵;
- 1447 (9) money payable to a beneficiary in an administration action¹⁶;
- 1448 (10) the interest of a next of kin in a deceased's estate where the solicitor acted for a next of kin who propounded wills which were not established¹⁷;
- 1449 (11) the proceeds of foreclosure proceedings relating to a mortgage of real property¹⁸;
- 1450 (12) property detained from an administrator the proceeds of which were subsequently brought into another court¹⁹ and property defended by a trustee against a claim adverse to the trust;
- 1451 (13) investments successfully defended against a claim to follow them²⁰;
- 1452 (14) an unpaid judgment debt²¹;
- 1453 (15) money payable to a judgment creditor as receiver by way of equitable execution²²;
- 1454 (16) damages for collision²³;
- 1455 (17) money paid into court by a defendant in an action²⁴ where the money can be taken out by the claimant²⁵;
- 1456 (18) money brought into court upon realising the assets in a partnership action in which a receiver was appointed²⁶;
- 1457 (19) costs payable to the client whether under a judgment²⁷ or under an order made on an originating summons or otherwise²⁸; or
- 1458 (20) costs ordered by the Court of Appeal to be repaid as the result of an appeal²⁹.

1 See the Solicitors Act 1974 s 73(1)(a); and PARA 1011.

2 *Harrison v Harrison* (1888) 13 PD 180, CA, where the order was discharged on discretionary grounds.

- 3 *Re Keane, Lumley v Desborough* (1871) LR 12 Eq 115.
- 4 *Emden v Carte* (1881) 19 ChD 311, CA, following *Berdan v Greenwood* (1878) 3 Ex D 251, CA.
- 5 *Moxon v Sheppard* (1890) 24 QBD 627; *Hunt v Austin, ex p Mason* (1882) 9 QBD 598, CA.
- 6 *The Heinrich* (1872) LR 3 A & E 505.
- 7 *Re W C Horne & Sons Ltd, Horne v W C Horne & Sons Ltd* [1906] 1 Ch 271, distinguished in *Re Drew Simmons and Simmons v Drew* (1913) 135 LT Jo 323.
- 8 *Re John Clayton Ltd* (1905) 92 LT 223. See also *Re Massey, Re Freehold and Brickmaking Co* (1870) LR 9 Eq 367.
- 9 *Twynam v Porter* (1870) LR 11 Eq 181.
- 10 *Turnbull v Richardson* (1885) 1 TLR 244, CA, where the costs were limited to those incurred down to the time of appointing the receiver. Cf *Wingfield v Wingfield* [1919] 1 Ch 462, CA (receiver appointed but no prosecution; not an administration action).
- 11 *Bulley v Bulley* (1878) 8 ChD 479, CA.
- 12 *The Philippine* (1867) LR 1 A & E 309; *Pelsall Coal and Iron Co v London and North Western Ry Co (No 3)* (1892) 8 TLR 629.
- 13 *Ross v Buxton* (1889) 42 ChD 190; *The Paris* [1896] P 77; *M'Larnon v Carrickfergus UDC* [1904] 2 IR 44; *Re Turner, Wood v Turner* [1907] 2 Ch 126, 539, CA. See also *Twynam v Porter* (1870) LR 11 Eq 181. However, no order will be made if the compromise and the proceedings do not involve the recovery or preservation of property by the solicitor: *Rowlands v Williams* (1885) 2 TLR 72, CA.
- 14 *Ex p Tweed* [1899] 2 QB 167, CA. See also *Hyde v White, White v Hyde* [1933] P 105, where solicitors acting for a plaintiff who propounded wills in a probate action and who was also interested in the event of intestacy were entitled to a charge for their costs upon the plaintiff's interest on intestacy although probate was not granted of the wills that she had propounded.
- 15 *Re Dickinson, Marquis of Bute v Walker, ex p Hoyle, Shipley and Hoyle* [1888] WN 94.
- 16 *Smith v Winter, ex p Hartley* (1870) 18 WR 447.
- 17 *Hyde v White, White v Hyde* [1933] P 105.
- 18 *Wilson v Round* (1863) 4 Giff 416. As to establishing the validity of a mortgage see *Keenan v Armstrong* (1891) 27 LR Ir 371. See also *Dennis v Addy* [1896] 1 IR 411.
- 19 *Catlow v Catlow* (1877) 2 CPD 362.
- 20 *Porter v West* (1880) 50 LJ Ch 231.
- 21 *Birchall v Pugin* (1875) LR 10 CP 397; *Farrant v Caley* [1924] WN 170, CA.
- 22 *Duff v Tuite* [1914] 2 IR 31.
- 23 *The Marie Gartz (No 2)* [1920] P 460; and see *The Paris* [1896] P 77.
- 24 Eg an action for trespass: see *Clover v Adams* (1881) 6 QBD 622.
- 25 *Emden v Carte* (1881) 19 ChD 311, CA (denial of liability); cf *Westacott v Bevan* [1891] 1 QB 774, DC.
- 26 *Jackson v Smith, ex p Digby* (1884) 53 LJ Ch 972; *Re Suffield and Watts, ex p Brown* (1888) 20 QBD 693, CA; *Re Nicholas and Paine, ex p Lovett* (1889) 61 LT 87; *Ridd v Thorne* [1902] 2 Ch 344; *Newport v Pougher* [1937] Ch 214, [1937] 1 All ER 276, CA.
- 27 *Dallow v Garrold, ex p Adams* (1884) 14 QBD 543, CA. See also *Campbell v Campbell and Lewis* [1941] 1 All ER 274 at 277.
- 28 *Re Blake, Clutterbuck v Bradford* [1945] Ch 61, [1945] 1 All ER 1, CA.

29 *Guy v Churchill* (1887) 35 ChD 489, CA.

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1014. Effect of counterclaim.

Where there is a counterclaim, a charging order has been made only in relation to the balance payable after deducting the sum payable on the counterclaim from the sum payable on the claim¹.

¹ *Westacott v Bevan* [1891] 1 QB 774, DC. As to the allowance of a set-off of judgments see PARA 1008. See also *Johnston v Mackenzie* [1911] 2 IR 118.

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1015. Need for property capable of being charged.

There can be no charging order unless the property is capable of being charged. Thus, a charging order will not be made in an action relating to an easement¹; or over property which is awarded by the court for personal maintenance²; and a charging order should not be capable of being made in relation to property which by law is inalienable because it is a personal allowance³. Moreover, the particular property may be excluded by statute⁴.

1 *Foxon v Gascoigne* (1874) 9 Ch App 654. As to easements generally see **EASEMENTS AND PROFITS A PRENDRE**.

2 See *Leete v Leete* (1879) 48 LJP 61; and see PARA 1007 note 2.

3 See *Smith v Smith* [1923] P 191 at 200, CA.

4 See eg the Social Security Administration Act 1992 s 187.

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1016. Recovery or preservation of property.

The court's statutory power to make a charging order does not arise unless the property is recovered or preserved¹. Property may be recovered or preserved in a successful suit to clear it of an incumbrance even if the incumbrance had no value²; or where a claim to a share in it is successfully resisted³; or in an administration action, even though the estate is very much depleted⁴; and the fact that the client has died and his estate is being administered by the court⁵ does not prevent an order being made. Property has been held not to have been recovered or preserved:

- 1459 (1) where an administration order had been made but not executed⁶;
- 1460 (2) where a winding-up petition was successfully resisted on behalf of the promoters of a company but the company was wound up voluntarily⁷;
- 1461 (3) where a claimant in an action in the Queen's Bench Division paid money into court to procure a stay of the petition by the defendant and the claimant on a counterclaim⁸;
- 1462 (4) where a receiver was appointed in an action by a wife against her husband claiming the assets of a club run by them jointly and she abandoned the claim⁹;
- 1463 (5) where money was paid into court with a denial of liability but the client proceeded with the claim and recovered a smaller sum¹⁰;
- 1464 (6) where money was paid into court as security for the costs of an appeal which was later abandoned¹¹; and
- 1465 (7) where money was paid pursuant to an order for specific performance¹².

1 See the Solicitors Act 1974 s 73(1)(a); and PARA 1011; *Greer v Young* (1883) 24 ChD 545, CA; *Re Blake, Clutterbuck v Bradford* [1945] Ch 61, [1945] 1 All ER 1, CA.

2 *Jones v Frost, Re Fiddey* (1872) 7 Ch App 773.

3 *Till v Till* [1974] QB 558, [1974] 1 All ER 1096, CA.

4 *Re Turner, Wood v Turner* [1907] 2 Ch 126 (on appeal [1907] 2 Ch 539, CA). Where property is managed for a minor who subsequently attains his majority it is preserved for him: *Baile v Baile* (1872) LR 13 Eq 497.

5 *Wilson v Hood* (1864) 3 H & C 148.

6 *Pinkerton v Easton* (1873) LR 16 Eq 490.

7 *Re United Shepherd's Wheal Rose Co, Mead and Daubeny's Claim* [1885] WN 15.

8 *Pierson v Knutsford Estates Co* (1884) 13 QBD 666, CA.

9 *Wingfield v Wingfield* [1919] 1 Ch 462, CA.

10 *Westacott v Bevan* [1891] 1 QB 774, DC. Cf *Clover v Adams* (1881) 6 QBD 622; *Emden v Carte* (1881) 19 ChD 311, CA.

11 *The Dirigo* [1920] P 425.

12 *Loescher v Dean* [1950] Ch 491, [1950] 2 All ER 124.

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1017. Possibility of charge irrespective of interest.

A claim for a charging order is of a similar nature to a claim for salvage¹. Consequently the order may charge the property recovered or preserved and need not be limited to the client's interest in it², or may be made even though the client has no interest in the property³. In general the order may be made wherever property has been recovered or preserved in proceedings by reason of the solicitor's employment and as against every person taking the benefit of the recovery or preservation⁴. The court will not charge the interests of other people on the property unless the client is unable to pay the costs⁵. The charge should be confined to the property recovered or preserved which itself may be a limited interest⁶.

1 *Greer v Young* (1883) 24 ChD 545, CA; *Charlton v Charlton* (1883) 52 LJ Ch 971; *The Dirigo* [1920] P 425 at 428-429. See also *Shevlin v McGrane* (1886) 17 LR Ir 271.

2 *Bulley v Bulley* (1878) 8 ChD 479, CA. See also PARAS 1000, 1007.

3 *Bailey v Birchall* (1865) 2 Hem & M 371.

4 *Scholey v Peck* [1893] 1 Ch 709 at 711. As to adopting proceedings see *Baile v Baile* (1872) LR 13 Eq 497.

5 *Harrison v Cornwall Minerals Rly Co* (1884) 53 LJ Ch 596; *Re WC Horne & Sons Ltd*, *Horne v WC Horne & Sons Ltd* [1906] 1 Ch 271.

6 *The Philippine* (1867) LR 1 A & E 309; *Scholefield v Lockwood* (1868) LR 7 Eq 83; *Lloyd v Jones* (1879) 40 LT 514; *The Birnam Wood* [1907] P 1, CA; *Hyde v White*, *White v Hyde* [1933] P 105; *Wimbourne v Fine* [1952] Ch 869, [1952] 2 All ER 681.

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1018. Priority of charging orders.

The charge which a solicitor obtains under the statutory charging order¹ is usually a first charge on the property² but the making of the order and thus its terms, and the priority it confers, are matters of discretion³. The solicitor may obtain priority over creditors⁴, or over a judgment creditor attaching a debt⁵, or over his client's trustee in bankruptcy in respect of costs incurred before notice of the act of bankruptcy⁶, or in respect of the costs of proceedings taken by an undischarged bankrupt and adopted by the trustee in bankruptcy⁷, or over a repurchaser including a mortgagee who has notice of the right to claim the order, that is in effect notice that the property is being recovered or preserved in proceedings⁸, or over a claim for wages and necessities in an Admiralty action⁹. All conveyances and acts done to defeat or operating to defeat¹⁰ the charge are void as against the solicitor¹¹, although he does not obtain priority over the rights of a bona fide purchaser for value who has taken a conveyance without notice¹², or over the rights of trustees to an indemnity out of the trust's estate¹³.

As between successive solicitors the former solicitor will be granted a charging order subject to the prior right of the solicitor then acting¹⁴.

1 le under the Solicitors Act 1974 s 73(1)(a): see PARA 1011.

2 The only exception for which the Solicitors Act 1974 s 73 provides is in favour of a bona fide purchaser for value without notice who takes a conveyance of the property: see the text and note 12. Where the property is a fund in court the solicitor's right to costs is an equitable claim conferring priority without recourse to the Act or regard to questions of notice over claims of assignees: *Haymes v Cooper* (1864) 33 Beav 431; *The Jeff Davis* (1867) LR 2 A & E 1.

3 See PARA 1011 note 3.

4 *Jackson v Smith, ex p Digby* (1884) 53 LJ Ch 972 (partnership action); *Re Suffield and Watts, ex p Brown* (1888) 20 QBD 693, CA (landlord having power to distrain); *Scholey v Peck* [1893] 1 Ch 709 (mortgagee); *Dennis v Addy* [1894] 1 IR 511 (equitable mortgagee); *Ridd v Thorne* [1902] 2 Ch 344; *Newport v Pougher* [1937] Ch 214, [1937] 1 All ER 276, CA (partnership actions).

5 *The Jeff Davis* (1867) LR 2 A & E 1; cf *North v Stewart* (1890) 15 App Cas 452, HL; *Cole v Eley* [1894] 2 QB 180 at 187, DC (affd [1894] 2 QB 350, CA); *Hamer v Giles* (1879) 11 ChD 942; *Birchall v Pugin* (1875) LR 10 CP 397 at 401; *Shippey v Grey* (1880) 49 LJQB 524, CA; *Dallow v Garrold, ex p Adams* (1884) 14 QBD 543, CA; *Re Debtor (No 29 of 1931)*, *Wild v Petitioning Creditors and Debtor* (1934) 103 LJ Ch 303.

6 *Re Nicholas and Paine, ex p Lovett* (1889) 61 LT 87; but see *Scholefield v Lockwood* (1868) LR 7 Eq 83; *Keeson v Luxmoore* (1889) 61 LT 199, where the order was limited to exclude property recovered or preserved by the trustee's intervention. The costs incurred before a liquidation are similarly protected; *Re Meter Cabs Ltd* [1911] 2 Ch 557 (a decision on lien).

7 *Emden v Carte* (1881) 19 ChD 311, CA. As to the principle that a person adopting proceedings should pay for them see *Guy v Churchill* (1887) 35 ChD 489, CA. See also PARAS 767, 1011 note 2.

8 *Cole v Eley* [1894] 2 QB 180, DC (affd [1894] 2 QB 350, CA); *Faithful v Ewen* (1878) 7 ChD 495, CA; and see *The Paris* [1896] P 77; *Ridd v Thorne* [1902] 2 Ch 344 at 349; *Newport v Pougher* [1937] Ch 214 at 226, [1937] 1 All ER 276 at 285, CA. The solicitor's knowledge of the assignment does not prejudice his claim: *Pilcher v Arden, Re Brook* (1877) 7 ChD 318, CA. See also *Wimbourne v Fine* [1952] Ch 869, [1952] 2 All ER 681.

9 *The Heinrich* (1872) LR 3 A & E 505. Cf *The Livietta* (1883) 8 PD 209.

10 See PARA 1011.

11 Solicitors Act 1974 s 73(1).

12 Solicitors Act 1974 s 73(1); *Re Suffield and Watts, ex p Brown* (1888) 20 QBD 693 at 696, CA.

13 *Re Turner, Wood v Turner* [1907] 2 Ch 126; on appeal [1907] 2 Ch 539, CA. As to the order of payment in a debenture holder's action see *Batten v Wedgwood Coal and Iron Co* (1884) 28 ChD 317.

14 *Re Wadsworth, Rhodes v Sugden* (1886) 34 ChD 155; *Re Knight, Knight v Gardner* [1892] 2 Ch 368. Cf *Hyde v White, White v Hyde* [1933] P 105. See also PARA 1004.

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1019. Courts which may make charging orders.

Every judge of the High Court¹, whether sitting in bankruptcy or not², has jurisdiction in court or in chambers³ to make a charging order and even if the property is recovered or preserved by proceedings before the Court of Appeal, it is not necessary to apply to that court for the order⁴. Statutory jurisdiction is expressly conferred on the court in which the solicitor was employed to prosecute or defend proceedings⁵, and accordingly the application should be made to the judge who tried the action where that is reasonably possible⁶. The application is one which is appropriately made in chambers⁷ to a judge in chambers, a master, a costs judge or a district judge of the Family Division⁸. In bankruptcy or winding-up proceedings power to make a charging order may be delegated to the district judge⁹.

For the purpose of regulating the remuneration of a solicitor in respect of contentious business¹⁰ done by him in a county court, a county court has jurisdiction to make a charging order and the above considerations¹¹ apply equally with regard to applications to a county court¹².

1 *Dallow v Garrold, ex p Adams* (1884) 14 QBD 543 at 546, CA; *Re Deakin, ex p Daniell* [1900] 2 QB 489, CA.

2 *Re Suffield and Watts, ex p Brown* (1888) 20 QBD 693, CA; *Re Wood, ex p Fanshawe* [1897] 1 QB 314; *Re Deakin, ex p Daniell* [1900] 2 QB 489, CA. See also *Re Humphreys, ex p Lloyd-George and George* [1898] 1 QB 520, CA (the solicitor should not usually be given a charge as he must be taken to have known the order of payment of debts).

3 *Clover v Adams* (1881) 6 QBD 622.

4 *Re Deakin, ex p Daniell* [1900] 2 QB 489 at 495, CA. Nevertheless the Court of Appeal can make the order: *Guy v Churchill* (1887) 35 ChD 489, CA.

5 See the Solicitors Act 1974 s 73(1); and PARA 1011. See also *Wilson v Hood* (1864) 3 H & C 148; *Catlow v Catlow* (1877) 2 CPD 362, where property was paid into a county court but the application was made to the court where the matter was tried.

6 *Heinrich v Sutton, Re Fiddey* (1871) 6 Ch App 865; *Owen v Henshaw* (1877) 7 ChD 385. Where an action has been transferred the judge who tried it may make the order: *Porter v West* (1880) 43 LT 569.

7 *Re Wood, ex p Fanshawe* [1897] 1 QB 314.

8 See CPR 67.3(3); and PARA 970.

9 *Re Wood, ex p Fanshawe* [1897] 1 QB 314.

10 As to the meaning of 'contentious business' see PARA 933 note 2.

11 In so far as they depend on the Solicitors Act 1974 s 73: see PARA 1011.

12 See the Solicitors Act 1974 s 74; and PARA 970.

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1020. Procedure on application for charging order.

Applications for a charging order may be made by:

- 1466 (1) the solicitor acting at the time of recovering or preserving the property¹;
- 1467 (2) a former solicitor²;
- 1468 (3) several former solicitors together³;
- 1469 (4) the personal representative of the solicitor⁴; or
- 1470 (5) an assignee of the costs⁵, but not by the client⁶ or London agents as against the lay client⁷.

The application should not be made *ex parte*⁸, but if an *ex parte* order is made any application to set it aside should be made promptly⁹. The application for a charging order may be made to a master, a costs judge or a district judge¹⁰. If the order will affect the interests of persons other than the client, those persons should be served but, if the client's interests alone will be affected, he alone need be served¹¹. In a proper case substituted service will be ordered¹². Application may be made for an order in respect of the difference between the solicitor and own client (that is, indemnity) and standard basis for costs¹³.

1 *Re Wadsworth, Rhodes v Sugden* (1886) 34 ChD 155 at 158; and see the Solicitors Act 1974 s 73(1); and PARA 1011.

2 *Pilcher v Arden, Re Brook* (1877) 7 ChD 318, CA; *Clover v Adams* (1881) 6 QBD 622; *Jackson v Smith, ex p Digby* (1884) 53 LJ Ch 972; *Re Wadsworth, Rhodes v Sugden* (1886) 34 ChD 155; *Wimbourne v Fine* [1952] Ch 869, [1952] 2 All ER 681.

3 *Hyde v White, White v Hyde* [1933] P 105.

4 *Baile v Baile* (1872) LR 13 Eq 497.

5 *Briscoe v Briscoe* [1892] 3 Ch 543.

6 See *Harrison v Cornwall Minerals Rly Co* (1884) 53 LJ Ch 596.

7 *Macfarlane v Lister* (1887) 37 ChD 88, CA.

8 *The Birnam Wood* [1907] P 1, CA. Pending an application the court may make an *ex parte* order preserving a fund in court from being paid out: *Gerrard v Dawes, Re Dawes Estate, Dryden v Dawes* (1869) 21 LT 322; cf *Lloyd v Jones* (1879) 40 LT 514. The court has no power to restrain the issue of probate: *Heap v Jackson* [1886] WN 192.

9 *Re Deakin, ex p Daniell* [1900] 2 QB 489, CA.

10 See PARA 1019. The claim form should be entitled in the action but need not be entitled in the matter of the Solicitors Act 1974 or of the solicitor: see *Jackson v Smith, ex p Digby* (1884) 53 LJ Ch 972.

11 *Brown v Trotman* (1879) 12 ChD 880.

12 *Hunt v Austin, ex p Mason* (1882) 9 QBD 598, CA; *Rowley v Southwell* (1889) 61 LT 805.

13 *Guy v Churchill* (1887) 35 ChD 489, CA; *Re WC Horne & Sons Ltd, Horne v WC Horne & Sons Ltd* [1906] 1 Ch 271.

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1021. Scope of charging order.

A charging order¹ should be limited to charge only costs properly incurred in recovering or preserving property². In an administration action the charging order must be limited to the costs properly incurred in recovering and preserving the money in court, and general administration costs cannot be claimed³, but this limitation does not apply in partnership actions⁴. A charging order may direct the costs to be assessed⁵, although such an assessment does not have all the incidence of an assessment under the Solicitors Act 1974⁶. The assessment of costs as between solicitor and own client for the purpose of a statutory charging order can be directed without special circumstances being shown, even if the facts are such that if assessment were sought in the usual way under that Act it would be necessary for the client to show special circumstances in order to obtain an order for assessment, for example where more than a year has elapsed since the bill of costs was delivered⁷. The court may give directions for raising money to pay or for paying the assessed costs⁸ out of the property recovered or preserved⁹ but an application before the costs are directed to be paid in the cause is premature¹⁰. The solicitor's costs of the application may be directed to be paid and added to the amount charged¹¹, and so may the solicitor's costs of an appeal where the order is made by the Court of Appeal¹². After a charging order has been made a stop order may be obtained on funds in court, but the making of such an order does not entitle the solicitor, not being a party to the proceedings, to be represented as a further consideration of the action¹³.

1 See eg *Duff v Tuite* [1914] 2 IR 31.

2 *Emden v Carte* (1881) 19 ChD 311, CA. See also *Turnbull v Richardson* (1885) 1 TLR 244, CA.

3 *Re Clayton, Collins v Clayton and Reade* [1940] Ch 539, [1940] 2 All ER 233, CA.

4 *Kay v Lovell* [1940] Ch 650, [1940] 3 All ER 89.

5 See the Solicitors Act 1974 s 73(1)(b); and PARA 1011.

6 See the Solicitors Act 1974 s 70; and PARA 967 et seq. Thus, the one-fifth rule as to the costs of assessment (see PARA 985) does not apply.

7 Ie under the Solicitors Act 1974 s 70: see PARA 971 et seq; and *Harris v Yarm* [1960] Ch 256.

8 As to the meaning of 'costs' see PARA 835 note 6.

9 Solicitors Act 1974 s 73(1)(b). Application for this purpose must be made by summons under a liberty to apply reserved in a charging order, but all persons interested in the property should be served: *Rowley v Southwell* (1889) 61 LT 805. The Solicitors Act 1974 s 73(1)(b) is prospectively amended by the Legal Services Act 2007 Sch 16 para 68 which reflects the replacement of taxation of costs with assessment of costs. As to assessment of costs see PARA 967.

10 *Re Green, Green v Green* (1884) 26 ChD 16, CA.

11 See *Duff v Tuite* [1914] 2 IR 31 at 33; *Re Debtor (No 29 of 1931)*, *Wilde v Petitioning Creditors and Debtor* (1934) 103 LJ Ch 303.

12 *Waterland v Serle* (1897) 42 Sol Jo 68, CA.

13 *Mildmay v Quicke* (1877) 6 ChD 553, CA.

UPDATE

1021 Scope of charging order

NOTE 9--Amendment made by Legal Services Act 2007 Sch 16 para 68 in force 1 January 2010: SI 2009/3250.

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(10) LEGAL AGENTS

(i) Employment of Agent

1022. When an agent may be employed.

A solicitor practising in the country who wishes to do work in London of either a contentious or a non-contentious character may (although he is not obliged to) employ a London solicitor as agent, and likewise solicitors practising in London or in particular districts may employ solicitors elsewhere on agency terms for particular purposes, such as the service of an injunction¹. There is no agency relationship between the country and London offices of the same firm, nor between two firms with a common partner². Normally there is no general retainer of a London agent by his country principal; the agent's retainer commences when he is instructed in a particular matter³. The employment of one solicitor by another on agency terms will be revoked by the death of the employer.

¹ See *Re Bishop, ex p Langley, ex p Smith* (1879) 13 ChD 110, CA; *Re Maugham (A Solicitor)* (1885) 2 TLR 115, CA (business transacted abroad).

² *Re Borough Commercial and Building Society* [1894] 1 Ch 289, CA.

³ *Solley v Wood* (1852) 16 Beav 370.

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1023. Position between client and principal solicitor.

The employment of a London solicitor as agent is within the scope of the authority of a country solicitor flowing from a retainer for the purposes of litigation proper to be conducted in London¹, but a solicitor has no authority, unless expressly conferred, to arrange that another solicitor is to conduct the matter, not as agent, but as principal². An agent should not enter his or his firm's name as principal solicitor on the record when he is in fact an agent³, and should not indorse a petition in such character; the process is liable to be set aside, since the lay client has not given authority⁴. The client, in general, is not concerned with the agent's employment, as there is no privity between them⁵. Thus, the solicitor directly employed by the client is responsible to the client for the agent's negligence⁶ or misconduct⁷, and the client cannot object to paying a solicitor his proper charges because there is some agreement between him and another solicitor for sharing those charges⁸. However, the principal solicitor will be liable to account for his profit from the agency transaction if he holds a fiduciary position which prevents him from retaining such profit for his own benefit⁹. The client may be bound against third parties by the agent's acts¹⁰. The client may invoke the court's inherent jurisdiction over its officers against the agent¹¹ and will be entitled to require details of the agent's bills to be included in the solicitor's bills¹². The client's right to change his solicitor on the record in litigation may be impeded by the agreement between the principal solicitor and the agent¹³.

1 *Solley v Wood* (1852) 16 Beav 370.

2 *Re Becket, Purnell v Paine* [1918] 2 Ch 72, CA. See also PARA 768.

3 *Wray v Kemp* (1884) 26 ChD 169. See also PARA 797.

4 *Re Scholes & Sons* (1886) 32 ChD 245.

5 See **AGENCY** vol 1 (2008) PARAS 54-56. Where, however, a country solicitor is one of several defendants and acts as solicitor for a co-defendant and employs agents on the co-defendant's behalf and as his own solicitor, it is a question whether, on the defence succeeding, the costs payable by the claimant are two sets (as in *Bainbrigge v Moss* (1856) 3 Jur NS 107) or one set including agency charges (see *Deere v Robinson* (1849) 7 Hare 283, where there was a sharing of costs rather than an agency).

6 See *Collins v Griffin* (1734) Barnes 37 (failure to notify principal of hearing date); *Robbins v Fennell* (1847) 11 QB 248 at 256 per Lord Denman CJ. Cf *Ex p Jones* (1833) 2 Dowl 161; *Robertson v Fleming* (1861) 4 Macq 167, HL; *Simmons v Rose, Weeks v Ward, Re Ward* (1862) 31 Beav 1 (inaccurate representation that receiver had entered into recognisances; solicitor liable for loss under summary jurisdiction). As to the summary jurisdiction over solicitors as officers of the Supreme Court see PARA 745 et seq.

7 *Simmons v Rose, Weeks v Ward, Re Ward* (1862) 31 Beav 1; *Asquith v Asquith* [1885] WN 31 (misappropriation of a cheque). See *Ex p Jones* (1833) 2 Dowl 161; *Gray v Kirby* (1834) 2 Dowl 601 (cited to show the liability of the country solicitor, and not as an authority that the agent cannot be liable under the summary jurisdiction to the lay client).

8 *Gordon v Dalzell* (1852) 15 Beav 351, where part of the costs of an English solicitor were to be paid to a Scottish solicitor, for whom the English solicitor had originally acted as agent but latterly had ceased so to act and had been employed by the client directly.

9 *Burge v Brutton* (1843) 2 Hare 373; *Re Taylor* (1854) 18 Beav 165.

10 *Withers v Parker* (1860) 5 H & N 725, Ex Ch; *Prestwich v Poley* (1865) 18 CBNS 806; *Re Newen, Carruthers v Newen* [1903] 1 Ch 812.

- 11 See PARA 755.
- 12 *Re Pomeroy and Tanner, Solicitors* (1897] 1 Ch 284. See also PARA 959.
- 13 See *Richards v Scarborough Market Co* (1853) 17 Beav 83; and as to change of solicitor see PARA 782.

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(ii) Relations between Agent and Client of Principal Solicitor

1024. Relation between client and solicitor agent.

The relationship of solicitor and client does not exist between the agent and the client, since there is no privity of contract between them¹, unless the agent becomes the principal solicitor²; nor is there privity of contract between the solicitor agent and any other agent, such as an auctioneer employed by the principal solicitor³. The solicitor agent is, however, answerable to the court as its officer and is therefore in effect liable to the client for misconduct⁴. It may be that the solicitor agent will be liable to the client in negligence⁵ and the agent may have wasted costs disallowed by the court⁶. The agent cannot sue the client for his costs⁷; the credit is given to the principal solicitor⁸. A custom has been established that the principal solicitor, not the lay client, is liable to the agent in the absence of express agreement to the contrary⁹. This custom, which is not confined to the case of a country solicitor and a country agent, extends also to that of country solicitor and London agent¹⁰. It has, however, no application as between English solicitors and Irish solicitors, and accordingly the right of an Irish solicitor instructed by an English solicitor to recover from the client is to be decided under the general law of principal and agent¹¹. The client has no right to claim assessment of the solicitor agent's bill¹²; nor is he entitled, where money is received on his behalf by the solicitor agent in the ordinary course of business, to maintain an action against the solicitor agent to enforce payment to himself¹³. He may, however, in a proper case apply under the court's summary jurisdiction for an order for payment against the solicitor agent as an officer of the court¹⁴, as, for instance, where the solicitor agent had no authority either from the client or from the principal solicitor to receive the money¹⁵, or where he wrongfully claims a lien¹⁶.

1 *Cobb v Becke* (1845) 6 QB 930; *Robbins v Fennell* (1847) 11 QB 248; *Macfarlane v Lister* (1887) 37 ChD 88, CA; *Porter v Kirtlan* [1917] 2 IR 138 at 147 (Ir CA).

2 *Quarrington v White* (1837) 6 LJ CP 253.

3 *Hannaford v Syms* (1898) 79 LT 30. See **AGENCY** vol 1 (2008) PARA 54 et seq.

4 See PARA 1023.

5 As to a solicitor's liability in negligence to a third person see *Ross v Caunters* [1980] Ch 297, [1979] 3 All ER 580; *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL. See also PARA 820 et seq.

6 See the Supreme Court Act 1981 s 51 (substituted by the Courts and Legal Services Act 1990 s 4). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

7 *Ward v Lawson* (1890) 43 ChD 353 at 360, CA, per Cotton LJ; *Scrace v Whittington* (1823) 2 B & C 11.

8 *Farewell v Coker* (1728) 2 P Wms 460; *Scrace v Whittington* (1823) 3 Dow & Ry KB 195; *Waller v Holmes* (1860) 1 John & H 239 at 241-242, per Page-Wood V-C. See also *Re Baker* (1907) 52 Sol Jo 173.

9 *Scrace v Whittington* (1823) as reported in 2 B & C 11; but see *Porter v Kirtlan* [1917] 2 IR 138 at 149 (Ir CA).

10 *Scrace v Whittington* (1823) as reported in 1 LJOSKB 221 at 222. This report should be compared with the report cited in note 9 for they differ, and in the report first cited the matter seems to have turned on a finding of particular facts, not on a finding of custom. See also PARA 1026 note 2.

11 *Hyndman v Ward* (1899) 15 TLR 182.

12 *Wildbore v Bryan, ex p Wildbore* (1820) 8 Price 677. The London agent presents his bill to the country solicitor and the whole or part of it can be taxed by the court under its inherent jurisdiction: *Storer & Co v Johnson* (1890) 15 App Cas 203, HL.

13 *Gray v Kirby* (1834) 2 Dowl 601; *Cobb v Becke* (1845) 6 QB 930; *Robbins v Fennell* (1847) 11 QB 248. Cf *Re Knox, ex p Baker* (1837) 1 Jur 894.

14 See PARA 755 note 1.

15 *Robbins v Heath* (1848) 11 QB 257. See also *Robbins v Fennell* (1847) 11 QB 248 at 255 per Lord Denman CJ.

16 *Ex p Edwards* (1881) 8 QBD 262, CA. See also PARA 755.

UPDATE

1024 Relation between client and solicitor agent

NOTE 6--Appointed day is 1 October 2009: SI 2009/1604.

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1025. Lien.

As against the lay client, an agent who has conducted litigation will have a lien¹ on the property recovered in the litigation through his exertions², extending to the costs of the litigation³. However, the agent is not employed by the lay client so as to be able to obtain a charging order⁴.

As against the lay client an agent who has papers of the client in his hands⁵ can have no greater right than the principal solicitor has⁶. If, therefore, the principal solicitor would have a retaining lien against the lay client if the papers were held by that solicitor, then the agent has a lien on them as against the lay client extending to no greater sum than the principal solicitor's lien extends to, but, subject to that limit, extending to the whole balance due from the principal solicitor to the agent⁷. If, on the other hand, the principal solicitor would have no retaining lien as against the lay client if the papers were held by that solicitor, then the agent has no retaining lien as against the lay client⁸, although if, after notice given by the agent to the lay client not to pay money to the principal solicitor without providing for the agent's claim, the lay client makes a payment contrary to the notice, the agent's retaining lien is not prejudiced by the payment⁹. It is immaterial whether the payment to the principal solicitor discharging his costs is in cash or by set-off¹⁰.

1 As to lien generally see **LIEN**.

2 As to the common law lien on property recovered see **PARA 1006** et seq.

3 *Lawrence v Fletcher* (1879) 12 ChD 858. See also *Moody v Spencer* (1822) 2 Dow & Ry KB 6 at 7 per Abbott CJ; *Dicas v Stockley* (1836) 7 C & P 587; *Peatfield v Barlow* (1869) LR 8 Eq 61; *Cockayne v Harrison* (1873) LR 15 Eq 298, where this lien does not seem to have been considered.

4 *Macfarlane v Lister* (1887) 37 ChD 88, CA. Cf *Tardrew v Howell* (1861) 3 Giff 381.

5 As to the property over which the lien extends see **PARA 997** et seq.

6 Cf **PARAS 999-1000**; *Waller v Holmes* (1860) 1 John & H 239 at 241.

7 *Waller v Holmes* (1860) 1 John & H 239 at 242; *Peatfield v Barlow* (1869) LR 8 Eq 61 at 64. The rule stated in the text must plainly be correct in principle in accordance with the authorities referred to in **PARAS 999-1000**, but the early cases are not clear on this question: see *Farewell v Coker* (1728) 2 P Wms 460; *Ward v Hepple* (1808) 15 Ves 297 (see the order set out there at 298-299); *Bray v Hine and Fox* (1818) 6 Price 203; *Dicas v Stockley* (1836) 7 C & P 587.

8 *Anon* (1784) 2 Dick 802; *Ward v Hepple* (1808) 15 Ves 297 at 298 per Lord Eldon; *Waller v Holmes* (1860) 1 John & H 239; *Re Andrew* (1861) 7 H & N 87; *Peatfield v Barlow* (1869) LR 8 Eq 61 (followed in *Cockayne v Harrison* (1873) LR 15 Eq 298); *Vyse v Foster* (1875) 32 LT 219 (affd 23 WR 413).

9 *Waller v Holmes* (1860) 1 John & H 239 at 242; *Peatfield v Barlow* (1869) LR 8 Eq 61 at 64.

10 *Waller v Holmes* (1860) 1 John & H 239 at 242. Cf *White v Royal Exchange Assurance* (1822) 1 Bing 20.

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(iii) Relations between Agent and Principal Solicitor

1026. Rights and liabilities of principal solicitor.

The principal solicitor stands to the solicitor agent in the relationship of principal¹, and is responsible to the agent for his costs². The principal solicitor, therefore, bears any loss which may arise from the client's failure to pay; on the other hand, he is entitled to retain for his own benefit any collateral advantage accruing from the business undertaken, such as interest paid on the amount of costs remaining unpaid³. If the principal solicitor has instructed his agent to brief counsel and he has done so, the principal solicitor cannot after briefs have been delivered revoke the agent's authority to pay counsel's fees⁴. Money received by an agent to meet a balance of account including counsel's fees is not, at any rate where the fees are represented as having been paid although they are outstanding, subject to a trust to pay the fees, but the principal solicitor may prove in the estate of the agent for the amount paid on account of those fees⁵.

1 *Re Nelson, Son and Hastings* (1885) 30 ChD 1 at 9-10, CA, per Pearson J. Thus, the principal solicitor may be the client of the agent within the meaning of the word 'client' in a covenant restraining competition expressed in articles of clerkship (*Reid v Burrows* [1892] 2 Ch 413), but the relationship between them is not exactly that of solicitor and client (*Ward v Eyre* (1880) 15 ChD 130, CA), although the agent may be made responsible to the principal solicitor for negligence (see *Dicas v Jay* (1830) 6 Bing 519; and the cases cited in PARA 1023 notes 6-7; *Robbins v Fennell* (1847) 11 QB 248 at 256 (privity of contract)).

2 *Scrace v Whittington* (1823) 3 Dow & Ry KB 195 (see PARA 1024 notes 9-10); *Waller v Holmes* (1860) 1 John & H 239 at 242; *Ward v Lawson* (1890) 43 ChD 353 at 360, CA, per Cotton LJ.

3 *Ward v Lawson* (1890) 43 ChD 353, CA.

4 *Rhodes v Fielder, Jones and Harrison* (1919) 89 LjKB 15, where in the report it does not appear plainly whether express instructions to brief counsel were or were not given, but since the instructions were to conduct an appeal authority to brief counsel must have been implied.

5 *Re Sandford Italo-Canadian Corpn Ltd v Sandiford* [1934] Ch 707.

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1027. Lien.

As between the solicitor agent and the principal solicitor, the agent, having conducted litigation, has a lien¹ on property recovered for the lay client by the agent's exertions extending to the whole balance of his account with the principal solicitor for professional business². The retaining lien of an agent is of like extent³.

1 As to lien generally see **LIEN**.

2 *Lawrence v Fletcher* (1879) 12 ChD 858. The right stated in the text constitutes an exception to the general rule considered in PARA 1006.

3 *Lawrence v Fletcher* (1879) 12 ChD 858; *Re Jones and Roberts* [1905] 2 Ch 219. Cf *Ex p Steele* (1809) 16 Ves 161 at 164; and PARAS 998-1000.

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1028. Remuneration of solicitor agent.

The agent's bill of costs to his principal can be assessed by the principal as being the chargeable party¹ and the court can direct assessment of the whole or part of the bill on such terms as it thinks fit under its inherent jurisdiction over the conduct of its officers².

Where a London agent acts for a country solicitor in several matters he will customarily be entitled to payment for work done at agreed intervals notwithstanding that the costs of particular proceedings have yet to be allowed or assessed. Failure of agent and principal to agree an appropriate basis for remuneration may give rise to problems on any assessment as to whether bills form part of an account to be settled at definite intervals or comprise a single bill rendered in separate chapters³.

1 le the party chargeable under the Solicitors Act 1974 s 70: see PARA 971.

2 *Storer & Co v Johnson* (1890) 15 App Cas 203, HL.

3 See *Re Nelson, Son and Hastings* (1885) 30 ChD 1; *Re Rower and Haslam* [1893] 2 QB 286; *Davidsons v Jones-Fenleigh* (1980) 124 Sol Jo 204, CA; *Chamberlain v Boodle and King (a firm)* [1982] 3 All ER 188, [1982] 1 WLR 1443, CA. See also PARA 1029.

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1029. Assessment of costs.

The principal solicitor may obtain delivery¹ of a bill of costs from his solicitor agent and assess his bill², but where detailed bills were delivered annually by the agent accompanied by cash accounts, it was held that the fact that part of the business to which they related was litigation either uncompleted or current in more than one year, and that the balances shown by the accounts were carried over, did not entitle the principal solicitor to taxation (now assessment) of the bills delivered more than one year previously, special circumstances not being shown, since the bills must be regarded as separate bills and not as parts of one whole bill³. The non-payment of counsel's fees charged in the bill, where the principal solicitor has not provided the requisite funds, does not constitute a special circumstance for the purpose of entitling the client to taxation (now assessment) where he would not otherwise be entitled⁴.

1 *Re A Solicitor* (1909) 54 Sol Jo 67.

2 *Jones v Roberts* (1838) 8 Sim 397; *Toghill v Grant, Re Boord* (1840) 2 Beav 261; *Re Smith* (1841) 4 Beav 309; *Smith v Dimes* (1849) 4 Exch 32; *Re Wilde (a solicitor)* [1910] 1 Ch 100 (but money need not now be brought into court). Cf *Ward v Lawson* (1872) 8 Ch App 65 (bill for account). An action for an account should not be brought where an application for assessment suffices: see *Harvey v Mayhew* (1853) 2 WR 128.

3 *Re Nelson, Son and Hastings* (1885) 30 ChD 1, CA. See also PARA 961.

4 *Re Nelson, Son and Hastings* (1885) 30 ChD 1, CA.

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(iv) Relations between Agent and Opposite Parties

1030. Agent's authority.

As regards the opposite parties to any litigation in which an agent is employed as solicitor on the record, he has authority to bind both the principal solicitor¹ and the client in all matters connected with his employment. Thus, he has authority to waive any irregularity in the proceedings², to grant indulgence³, to consent to any order being made⁴ or to compromise the action⁵, and payment to him of the amount due is valid as against the client⁶. To serve on the principal solicitor affidavits in support of a notice of motion whilst serving the notice of motion itself on the agent is irregular⁷, and a London agent has no authority to receive notice of appeal from a county court in a district in or near to which the principal solicitor carries on business⁸, even though the action was originally remitted from the High Court⁹.

The agent must act strictly as agent for the principal solicitor from whom his authority flows. Thus, the agent should be described in process as such¹⁰, and his authority terminates when that of the principal solicitor is terminated¹¹. Similarly, the death of the principal solicitor puts an end to the agent's authority¹², except for formal purposes, such as signing judgment¹³.

1 *Withers v Parker* (1860) 5 H & N 725, Ex Ch. See also *Simmons v Rose*, *Weeks v Ward*, *Re Ward* (1862) 31 Beav 1.

2 *Griffiths v Williams* (1787) 1 Term Rep 710.

3 *Wallace v Willington* (1737) Barnes 256.

4 *Withers v Parker* (1860) 5 H & N 725, Ex Ch.

5 *Re Newen*, *Carruthers v Newen* [1903] 1 Ch 812, following *Withers v Parker* (1860) 5 H & N 725, Ex Ch.

6 *Hanley v Cassam* (1847) 11 Jur 1088.

7 *Petty v Daniel* (1886) 34 ChD 172. Production of documents usually takes place at the agent's office: *Prestney v Colchester Corpn* (1883) 24 ChD 376, CA.

8 *Powell v Thomas* [1891] 1 QB 97, followed in *Jackson v Margrett* (1893) 68 LT 91, DC.

9 *Malley v Shepley* (1892) 62 LJQB 31, where the London agent's name and address were indorsed on the writ, but the particulars lodged with the registrar gave the solicitor's address as the address for service.

10 *Solley v Wood* (1852) 16 Beav 370. Where a rule requires signature by a lay client or his solicitor, the signature of the agent as such is insufficient, although, if so authorised, it seems that he may sign as solicitor for that particular purpose: *Re Summerville* (1885) 31 ChD 160, CA.

11 *Malins v Greenway* (1847) 10 Beav 564.

12 See *Harris v Nunn* (1886) 21 L Jo 440.

13 *Taunton v Goforth* (1825) 6 Dow & Ry KB 384; *Davies v Bowen* (1863) 7 LT 739.

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1031. Agent's personal liability.

As a general rule, the agent is not liable to pay costs to the opposite party¹. However, he may be made personally liable when he is guilty of misconduct, for example when he files a scandalous affidavit, even though drawn by the principal solicitor², or when he proceeds without authority³. The agent may have his wasted costs disallowed by the court or be ordered to meet such costs personally⁴.

1 *Becke v Cattell* (1841) 3 Man & G 480.

2 *Re Booth, ex p Wake* (1833) 3 Deac & Ch 246.

3 *Ruthin Corpn v Adams* (1835) 7 Sim 345; *Malins v Greenway* (1847) 10 Beav 564. See also PARA 796.

4 Supreme Court Act 1981 s 51 (substituted by the Courts and Legal Services Act 1990 s 4).

UPDATE

1031 Agent's personal liability

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

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1032. Privilege.

Legal professional privilege attaches to letters and communications between a solicitor and his professional agent¹.

¹ *Hughes v Biddulph* (1827) 4 Russ 190; *Bolton v Liverpool Corpn* (1833) 1 My & K 88; *Catt v Tourle* (1870) 23 LT 485; *Goodall v Little* (1851) 1 Sim NS 155; *MacFarlan v Rolt* (1872) LR 14 Eq 580.

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4. BARRISTERS

(1) THE PROFESSION

(i) Introduction

1033. Meaning of 'barrister'.

The term 'barrister'¹ is the name of a degree² and refers to a person who holds that degree³. It is also the name of a profession, and of a person who practises law as a member of that profession⁴.

Possession of the degree of barrister is a prerequisite of entitlement to practise as a barrister in England and Wales⁵, and subjects the holder, whether practising or not, to a code of professional conduct and a system of discipline⁶. It confers on the holder certain rights and privileges, including rights of audience before the courts⁷; it also renders the holder eligible for appointment to certain public offices⁸.

¹ So far as can be ascertained, the term 'barrister' originated in connection with the moots which began to be held at the Inns of Court in the early fourteenth century. As to the establishment of the Inns of Court see PARA 1039; and as to the Inns of Court today see PARAS 1050-1057. The term 'barrister-at-law', which is also sometimes seen, dates from the sixteenth century and seems to have been formed by popular usage in imitation of the terms 'serjeant-at-law', 'apprentice-at-law' and 'counsellor-at-law'. The term is found in some nineteenth century statutes (eg the Small Debts Act 1845 s 9 (repealed)), but is unknown to the Inns of Court. A preference for the description 'barrister' has been expressed by the Bar Council: see Annual Statement 1969-70 p 40. As to the creation of the Bar Council (ie the General Council of the Bar) see PARA 1040. As to the Bar Council today see PARAS 1042-1048.

² There are four Inns of Court which have the power to award the degree of barrister: see PARAS 1050-1057. The degree is recognised in the Education (Recognised Awards) Order 1988, SI 1988/2035, Schedule. As to the recognition of such degrees see the Education Reform Act 1988 s 214; and **EDUCATION** vol 15(2) (2006 Reissue) PARA 729.

³ The Code of Conduct of the Bar of England and Wales (8th Edn, 2004) defines a barrister as an individual who has been called to the Bar by one of the Inns of Court and who has not ceased to be a member of the Bar: para 1001. For the purposes of the Legal Services Act 2007, except where the context otherwise requires, 'barrister' means an individual who has been called to the Bar by an Inn of Court and is not disbarred by order

of an Inn of Court: s 207(1). As to the Bar see PARA 1034. As to call to the Bar see PARAS 1039, 1075-1078. As to the Code of Conduct see PARA 1150.

4 In the Code of Conduct of the Bar of England and Wales (8th Edn, 2004), such a person is described as a 'practising barrister': see PARA 1035. As to what constitutes practising as a barrister see PARA 1152. As from a day to be appointed it is an offence for an unqualified person to pretend to be a barrister: see the Legal Services Act 2007 s 181; and PARA 594.

5 As to the right to practise as a barrister see PARA 1153. Other conditions that a barrister must satisfy in order to be entitled to practise as such include completion of applicable training and professional development requirements (see PARA 1063 et seq) and possession of a current practising certificate (see PARA 1155).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004); and PARA 1150.

7 As to a barrister's rights of audience see PARAS 1109-1123. As to a barrister's rights in relation to drafting documents see PARAS 1129-1134. As to a barrister's privileges and immunities see PARAS 1142-1148.

8 See PARAS 1124-1128.

UPDATE

1033 Meaning of 'barrister'

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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1034. Meaning of 'the Bar'.

The expression 'the Bar', which in its original sense referred to a partition separating the part of the court in which the judges sit from the rest of the court¹, in its modern sense is used as a collective term to refer to all persons who have been 'called to the Bar' by an Inn of Court², that is, all barristers of England and Wales³.

1 See Bellot *Some Early Law Courts and the English Bar* (1922) 38 LQR 168. The 'bar' from which the term 'barrister' derives is not the bar of an actual court but the bar of the mock courts within the Inns at which students who were 'called to the bar' participated in advocacy exercises: see PARA 1039.

2 As to the establishment and institution of the Inns of Court see PARA 1039; and as to the Inns of Court today see PARAS 1050-1057. As to call to the Bar see PARAS 1075-1079.

3 See the Introduction and Constitutions (2008) Pt I (Introduction) para 1, which defines 'the Bar' as all self-employed barristers, employed and non-practising barristers. As to the Introduction and Constitutions see PARA 1042 note 8. The Code of Conduct of the Bar of England and Wales (8th Edn, 2004) (as to which see PARA 1150) defines the 'Bar' as the Bar of England and Wales: para 1001. As to self-employed barristers see PARA 1036. As to employed barristers see PARA 1037. As to non-practising barristers see PARA 1035.

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1035. Practising and non-practising barristers.

For the purposes of the professional rules governing the Bar¹, a distinction is drawn between 'practising' and 'non-practising' barristers². There are two categories of practising barrister, namely, self-employed barristers³ and employed barristers⁴. Non-practising barristers include persons who are practising law but not in the capacity of barrister (such as barristers who are practising as solicitors⁵), as well as all other persons who hold the degree of barrister but are not practising as such⁶.

1 The Introduction and Constitutions (2008) (see PARA 1042 note 8); the Consolidated Regulations (2007) (see PARA 1060); and the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) (see PARA 1150).

2 A 'practising barrister' is a barrister who is practising as such within the meaning of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 201 (see PARA 1152), and a 'non-practising barrister' is a barrister who is not a 'practising barrister': para 1001. As to a barrister's right to practise see PARA 1153.

3 As to self-employed barristers see PARA 1036.

4 As to employed barristers see PARA 1037.

5 A barrister who is entitled to practise as a member of another authorised body may not practise as a barrister: see PARA 1157.

6 As to the meaning of 'non-practising barrister' see note 2.

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1036. Self-employed barristers.

For the purposes of the professional rules governing the Bar¹, a self-employed barrister² is a practising barrister³ other than an employed barrister⁴ acting in the course of his employment⁵. The main differences in the rules applicable to self-employed barristers and employed barristers concern the functions they may undertake⁶ and the persons to whom they may supply legal services⁷ and from whom they may take instructions⁸.

1 Ie the Introduction and Constitutions (2008) (see PARA 1042 note 8); the Consolidated Regulations (2007) (see PARA 1060); and the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) (see PARA 1150).

2 Self-employed barristers were formerly known as 'barristers in independent practice', which expression is still used by the Consolidated Regulations (2007) Sch 1, in defining such a barrister (ie by reference to the definition contained in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001).

3 As to the meaning of 'practising barrister' see PARA 1035 note 2. As to what constitutes practising as a barrister for this purpose see PARA 1152. As to barristers' right to practise see PARA 1153.

4 As to employed barristers see PARA 1037.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

6 Unlike employed barristers, self-employed barristers do not have the right to conduct litigation (see PARA 1162) and are subject to certain restrictions on the legal services which they may supply (see PARA 1160).

7 As to the meaning of 'legal services' see PARA 1152. There are no general restrictions on the persons to whom self-employed barristers may supply legal services provided they satisfy the relevant requirements: see PARA 1159. As to the persons to whom employed barristers may supply legal services see PARA 1161.

8 As to the persons from whom self-employed barristers may take instructions see PARAS 1173-1176.

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1037. Employed barristers.

For the purposes of the professional rules governing the Bar¹, an 'employed barrister' means a practising barrister² who is employed either under a contract of employment or by virtue of an office under the Crown or in the institutions of the European Community and who supplies legal services³ as a barrister in the course of his employment⁴. A barrister employed to supply legal services under a contract for services may also be treated as an employed barrister for these purposes provided that the contract is in writing, is for a determinate period⁵, and is the only contract under which the barrister is supplying legal services during that period⁶.

Unlike self-employed barristers⁷, employed barristers have the right to conduct litigation⁸, and are not subject to the same restrictions on the legal services which they may supply⁹. As a general rule, however, an employed barrister acting in the course of his employment may only supply legal services to his employer¹⁰ (and certain associated persons) and not to the public¹¹.

1 In the Introduction and Constitutions (2008) (see PARA 1042 note 8); the Consolidated Regulations (2007) (see PARA 1060); and the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) (see PARA 1150).

2 As to the meaning of 'practising barrister' see PARA 1035 note 2. As to what constitutes practising as a barrister for this purpose see PARA 1152. As to barristers' right to practise see PARA 1153.

3 As to the meaning of 'legal services' see PARA 1152.

4 Introduction and Constitutions (2008) Pt I (Introduction) para 1; Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. Note, however, that for the purposes of the Introduction and Constitutions (2008), 'employed barrister' does not include a person carrying out full-time judicial functions: see Pt I (Introduction) para 1.

5 This is subject to any provision for earlier termination on notice: Introduction and Constitutions (2008) Pt I (Introduction) para 1; Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 503(b).

6 Introduction and Constitutions (2008) Pt I (Introduction) para 1; Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 503. The Bar Standards Board may grant a specific waiver of the requirement that the contract for services is the only contract under which the barrister is supplying legal services during the relevant period: Introduction and Constitutions (2008) Pt I (Introduction) para 1; Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 503(c). As to the Bar Council see PARAS 1042-1048. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However the body responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

7 As to self-employed barristers see PARA 1036.

8 See PARA 1162. As to the meaning of 'right to conduct litigation' see PARA 1161 note 14. As to rights to conduct litigation generally see PARAS 495, 498 et seq; and **COURTS** vol 10 (Reissue) PARAS 331-332.

9 As to the restrictions on the legal services which self-employed barristers may supply see PARA 1160.

10 For these purposes, 'employer' means the person by whom the employed barrister is employed as such and any holding, subsidiary or associated company, corporate body or firm of that person: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

11 See PARA 1161.

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(ii) Origins and Development

1038. The emergence of the profession.

There has been a division of function between advocate ('barrister' in modern usage) and attorney or solicitor in the English legal profession, as in the civil law system, since a secular legal profession first emerged in England at the beginning of the thirteenth century¹. Originally, however, there was nothing to prevent a barrister from soliciting causes or dealing directly with clients as part of his profession, and many barristers did so. However, the practice of removing the barrister from direct contact with the lay client developed over the centuries until it became the 'almost uniform usage'². In 1888, the Attorney General gave a ruling that a barrister should not act or advise without the intervention of a solicitor in any contentious matter³, and the rule was later extended to non-contentious matters⁴.

The final stage in the emergence of the Bar as a distinct profession⁵ was the exclusion of attorneys and solicitors from the Inns of Court⁶ and thus from the degree of barrister⁷.

1 See further Baker 'Counsellors and Barristers: an Historical Study' (1969) 27 CLJ 205; Baker *An Introduction to English Legal History* (4th Edn, 2002) pp 156-157; 1 Pollock and Maitland's *History of English Law* (2nd Edn, 1898) pp 211-216.

2 In *Doe d Bennett v Hale* (1850) 15 QB 171 at 186, per Lord Campbell CJ. An important step in the process of differentiation between the professions was the Act 2 Geo 2 c 23 of 1728 ('For the better Regulation of Attorneys and Solicitors') (see 13 North *Lives of the Norths* (1890) p 139), which prohibited a person from acting as an attorney or a solicitor unless he had taken the oath prescribed by the Act and had been admitted and enrolled. In 1762, the Society of Gentlemen Practisers threatened to prosecute any barrister found transacting any business which properly belonged to the profession of attorneys and solicitors: see Birks *Gentlemen of the Law* (1960) pp 136, 195-196. See further 6 Holdsworth *History of English Law* (2nd Edn, 1937) pp 439-440.

3 The ruling was given by the Attorney General, Sir Richard Webster, in answer to a query from a barrister, Robert Yerburgh MP. The correspondence was published in the Times, 29 June 1888, and in the Law Times, 7 July 1888, and is reproduced in (1888) 85 LT Jo 176. See further Annual Statements 1896-97 p 11; 1907-08 p 13; 1919 p 8; 1933 p 6.

4 See Annual Statement 1955 p 20; and see *Re T (a barrister)* [1982] QB 430, [1981] 2 All ER 1105. 'Non-contentious' business meant business in relation to which no proceeding is pending or reasonably within contemplation before any tribunal in England and Wales: Annual Statement 1933 p 6. As to the scope of the present rule see PARAS 1174-1176.

5 As to the Bar as a profession see PARA 1034.

6 As to the establishment and institution of the Inns of Court see PARA 1039; and as to the Inns of Court today see PARAS 1050-1052.

7 The final step was taken in 1852 when a Joint Committee of the four Inns proposed uniform regulations concerning admission and call which were adopted by the Inns: these regulations excluded from admission to the Inns anyone who was an attorney, solicitor or clerk to an attorney or solicitor: as to the process see generally Birks *Gentlemen of the Law* (1960) pp 196-198; Bellot 'The Exclusion of Attorneys from the Inns of Court' (1910) 26 LQR 137. The same report also led to the formation of the Council of Legal Education, as to which see PARA 1039. As to the degree of barrister see PARA 1033.

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1039. A brief history of the profession.

During the fourteenth century the advocates practising in the Court of Common Bench became organised into a guild or society known as the order of serjeants-at-law¹. Concurrently there grew up a body of law students (or apprentices) who sat in a gallery at Westminster Hall to listen and take notes². Some of these apprentices-at-law would subsequently become serjeants³, but of the many who were not admitted to the order, some practised as advocates in the King's Bench, Chancery and lesser courts, and it was from this residual category of advocates that the profession of barrister emerged.

The societies which constitute the Inns of Court have existed from very ancient times and their original institution nowhere precisely appears⁴. In the fourteenth century the apprentices-at-law, whose work brought them to London when the courts were in session, lived in town houses (that is, inns) near the City of London⁵. Of these, four inns came to predominate, which are the four Inns of Court that still remain⁶. The Inns soon developed a system of education from which the call to the bar emerged⁷. Originally the call seems to have involved no more than being invited, after having taken part in learning exercises for the requisite length of time, to argue at a moot⁸. Gradually, however, the position of barrister became a more formal rank or degree within the Inns, and calls to the Bar assumed greater solemnity⁹. It was recognised as a public degree during the reign of Elizabeth I¹⁰. The educational life of the Inns of Court declined during the earlier part of the seventeenth century and collapsed during the Civil War¹¹. Although the old system of readings and moots was revived after the Restoration, it was discontinued or passed into an empty form before the end of the reign of Charles II¹².

The Council of Legal Education was established in 1852, and as a result of its initiatives the four Inns in 1863 for the first time made Consolidated Regulations, regulating the admission of students, the mode of keeping terms, the calling of students to the Bar, the granting of certificates to practise under the Bar and legal education¹³. The Council retained responsibility for the examination and training of law students until 1997 when the School of Law ceased to be administered by the Council and became a company limited by guarantee, and the Inns of Court and the Bar Educational Trust was established¹⁴.

The offices of Attorney General and Solicitor General, the law officers of the Crown, date from the fifteenth century¹⁵. By the end of the sixteenth century there had grown up a body of 'Her Majesty's learned counsel', retained by the Crown to assist the law officers in their work¹⁶. That group eventually evolved into Queen's Counsel as we understand them today¹⁷.

1 For an account of the history of the order see Baker *The Order of Serjeants at Law* (1984).

2 See Baker *An Introduction to English Legal History* (4th Edn, 2002) p 159.

3 Pollock and Maitland's *History of English Law* (2nd Edn, 1898) p 216.

4 *R v Gray's Inn* (1780) 1 Doug KB 353 at 354 per Lord Mansfield. As to the Inns of Court today see PARAS 1050-1052.

5 See Baker *An Introduction to English Legal History* (4th Edn, 2002) p 159. The 'apprentices in hostels' are mentioned in the Year Book, 29 Edw 3, 47A.

6 I.e. the societies of the Inner Temple, the Middle Temple, Gray's Inn and Lincoln's Inn. It appears that at least three of the four Inns had achieved their superiority by 1388, when a note in a manuscript Year Book of a call of eight serjeants records two as being called from Gray's Inn, five from the Inner Temple and one from the

Middle Temple: see Baker 'The Inns of Court in 1388' (1976) 92 LQR 184. The first record of a serjeant called from Lincoln's Inn is in 1425.

7 So far as can be ascertained, it was in connection with moots organised by the Inns that the term 'barrister' originated. The earliest known instance of the use of which is in the Black Books of Lincoln's Inn in Trinity Term 1455, where 'two of the best barristers' of the Inn ('duo de optimis barrer') are mentioned: see 1 Lincoln's Inn Black Books 26.

8 See Baker *The Legal Profession and the Common Law* (1986) pp 9-10. As to call to the Bar today see PARAS 1075-1078.

9 In 1494 it was ordered in Lincoln's Inn that calls to the Bar should not take place without the advice of all the governors and benchers in term-time: 1 Lincoln's Inn Black Books 100; and see Baker *The Legal Profession and the Common Law* (1986) pp 9-10. In 1518 the first permanent record of calls to the Bar began to be kept in Lincoln's Inn.

10 See the Act of Supremacy 5 Eliz I c 1 s 5(4) (repealed), which required the oath of supremacy to be taken by all persons 'that have taken or hereafter shall take any degree of learning in or at the common laws of this realm, as well utter barristers as benchers'. As to the recognition of the degree of barrister today see PARA 1033.

11 See 6 Holdsworth *History of English Law* (2nd Edn, 1937) pp 481-487.

12 See 6 Holdsworth *History of English Law* (2nd Edn, 1937) pp 487-493; and see also 1 North *Lives of the Norths* (1890) pp 149, 151. It is thought that the last reading at Gray's Inn was delivered in 1677 by Robert Baldock: see 2 Fletcher *The Pension Book of Gray's Inn* (1910) p 46.

13 As to the present Consolidated Regulations (2007) see PARA 1060.

14 See the Introduction and Constitutions (2008) Pt I (Introduction) PARA 3(a); Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 2; and PARA 1062. As to the Introduction and Constitutions see PARA 1042 note 8.

15 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

16 See 6 Holdsworth *History of English Law* (2nd Edn, 1937) p 472 et seq. These counsel are referred to in a Judges' Order of 1594: Dugdale Orig 314. The first King's Counsel to be established by patent was Francis Bacon.

17 See 6 Holdsworth *History of English Law* (2nd Edn, 1937) p 476. As to the office of Queen's Counsel today see PARA 1124.

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1040. Development of representation for the Bar.

In December 1883 a body to be called the 'Bar Committee' was constituted 'to collect and express the opinions of the members of the Bar on matters affecting the profession, and to take such action thereon as may be expedient'¹. The Bar Committee, which consisted of persons elected by the whole Bar, and was supported by voluntary contributions, continued to act until 1894, when its role was taken over by the General Council of the Bar (the 'Bar Council'), a consultative and advisory body constituted by regulations approved by the Bar in general meeting².

It was not until 1966 that a single body was established by resolutions of the Inns called the Senate of the Four Inns of Court to act on behalf of the Inns collectively in matters of common interest³. The Senate derived its authority from the Inns⁴, and the Bar Council was also represented on it⁵. Its powers, however, were circumscribed, and in 1974 the Senate of the Four Inns of Court was replaced by a new body called the Senate of the Inns of Court and the Bar⁶. This body was intended to provide a stronger central organisation for the profession as a whole⁷. It was made up of 75 representatives of the Inns and the Bar⁸. The Bar representatives also formed the membership of the Bar Council, which was reconstituted under the Regulations of the Senate of the Inns of Court and the Bar, but which remained an autonomous body for the purposes of its separate powers and functions⁹. This joint representative structure lasted until 1987, when it was dissolved¹⁰.

1 See (1883) 75 LT Jo 172; (1883) 76 LT Jo 65, 154. The formation of this body resulted from the presentation of a petition to the Attorney General as head of the Bar by 285 barristers. As to the Bar as a profession see PARA 1034.

2 See (1894) 96 LT Jo 563; (1894) 97 LT Jo 275; and see also Cock *Foundations of the Modern Bar* (1983) pp 215-221. As to the development of representative structures alongside the Inns of Court see PARAS 1040-1041. As to the Bar Council today see PARAS 1042-1048.

3 See the Regulations of the Senate of the Four Inns of Court (1970-71) reg 1.

4 Regulations of the Senate of the Four Inns of Court (1970-71) reg 2.

5 Regulations of the Senate of the Four Inns of Court (1970-71) reg 3.

6 See the Regulations of the Senate of the Inns of Court and the Bar (1974) reg 2.

7 See the first and second interim reports of the Pearce Committee (1972-3), on the recommendations of which the Senate of the Inns of Court and the Bar was established.

8 See the Regulations of the Senate of the Inns of Court and the Bar (1974) reg 4.

9 Regulations of the Senate of the Inns of Court and the Bar (1974) reg 11. As to the Bar Council today see PARAS 1042-1048. The Bar Council was empowered to call and conduct general meetings of the Bar, to make its own regulations and bye-laws, and to appoint committees and delegate any of its functions and powers to any such committee: reg 29. However, it shared the Senate's accommodation and secretariat, and was dependent on the Senate for finance.

10 See PARA 1041.

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1041. The Bar Council, the Bar Standards Board and the Council of the Inns of Court.

With effect from 1 January 1987, the Senate of the Inns of Court and the Bar¹ was dissolved and the Bar Council² was reconstituted as the central governing body of the Bar³. The Inns have undertaken to accept and implement the general policies laid down by the Bar Council, provided such policies are not contrary to any trust affecting their property or any of their other legal obligations⁴. A body called the Council of the Inns of Court (the 'Inns' Council') was set up to consult with the Bar Council and to represent and formulate policies for the Inns⁵. With effect from 1 January 2006, the regulatory and representative functions of the Bar Council were separated, with the former vested in the Bar Standards Board⁶, and the latter remaining with the Bar Council⁷.

1 The Senate of the Inns of Court and the Bar replaced the Senate of the Four Inns of Court, which had been established in order to act on behalf of the Inns collectively in matters of common interest: see PARA 1040. As to the establishment of the Inns of Court see PARA 1039; and as to the Inns of Court today see PARAS 1050-1052.

2 The General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040. As to the Bar Council today see PARAS 1042-1048.

3 As to the Bar as a profession see PARA 1034.

4 See the Introduction and Constitutions (2008) Pt I (Introduction) paras 4-6; and see further PARAS 1048, 1054. As to the Introduction and Constitutions see PARA 1042 note 8.

5 See PARAS 1053-1057.

6 As to the Bar Standards Board see PARA 1049.

7 See further PARA 1044.

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(iii) Organisation of the Bar

A. THE BAR COUNCIL

(A) CONSTITUTION AND FUNCTIONS OF THE BAR COUNCIL

1042. Constitution.

The Bar Council¹ is the governing body of the Bar², representing the Bar in its relations with others and having principal responsibility for the formulation of policy with regard to all matters affecting the profession³. The Senate⁴ and the Bar⁵ agreed to constitute the Bar Council for the purposes and with the authority, powers and duties set out in the Bar Council Constitution⁶, which is published in a combined document with the Inns' Council Constitution⁷ and the Constitution of the Inns of Court and the Bar Educational Trust⁸.

1 The General Council of the Bar, as from time to time constituted, is commonly referred to as the Bar Council: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; the Consolidated Regulations (2007) reg 1, Sch 1; and the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the creation of the Bar Council see PARA 1040. As to the officers and members of the Council see PARA 1043. As to the functions of the Council see PARA 1044. As to the delegation of the Council's regulatory functions to the Bar Standards Board and regulatory committees see PARAS 1044, 1049. As to the delegation of the Council's representative functions to the representative committees see PARA 1045. As to proceedings see PARA 1046. As to the Introduction and Constitutions see note 8. As to the Consolidated Regulations see para 1060. As to the Code of Conduct see PARA 1150.

2 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(a). As to the Bar as a profession see PARA 1034.

3 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(b). Prior to 1 January 1987 this responsibility lay with the Senate of the Inns of Court and the Bar: see PARAS 1040-1041. Since 1 January 2006 this responsibility lies with the Bar Standards Board, in so far as it applies to regulatory matters: see PARA 1049.

4 Ie the Senate of the Inns of Court and the Bar, as constituted prior to 1 January 1987, including the Bar Council of the Senate as constituted prior to that date: Introduction and Constitutions (2008) Pt I (Introduction) para 1. See further PARA 1041.

5 Ie all self-employed barristers and employed and non-practising barristers: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; and PARAS 1035-1037.

6 Introduction and Constitutions (2008) Pt I (Introduction) para 2(a). 'Bar Council Constitution' means the Constitution of the General Council of the Bar set out in Pt II (Constitution of the General Council of the Bar): Pt I (Introduction) para 1.

7 As to the Inns' Council Constitution see PARA 1053.

8 Ie the Introduction and Constitutions of the General Council of the Bar and of the Council of the Inns of Court and of the Inns of Court and the Bar Educational Trust (2008), which consists of four parts as follows: Pt I (Introduction); Pt II (Constitution of the General Council of the Bar); Pt III (Constitution of the Council of the Inns of Court); Pt IV (Constitution of the Inns of Court and the Bar Educational Trust). Where necessary in this title, this document will be referred to as the 'Introduction and Constitutions (2008)' followed by the relevant part heading.

As to the Inns of Court and the Bar Educational Trust (formerly the Council of Legal Education) see PARA 1062.

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1043. Officers and members.

The Bar Council¹ is made up of officers and members as follows.

The officers² are:

- 1471 (1) the Chairman³;
- 1472 (2) the Vice-Chairman⁴; and
- 1473 (3) the Treasurer⁵.

The members, in addition to the Chairman⁶, are up to 100 subscribers⁷ elected by various interested bodies⁸, plus the following office holders acting ex officio⁹:

- 1474 (a) the Attorney General¹⁰;
- 1475 (b) the Solicitor General¹¹;
- 1476 (c) the Director of Public Prosecutions¹²;
- 1477 (d) the leader for the time being of each circuit¹³;
- 1478 (e) the chairman for the time being of the Criminal Bar Association¹⁴;
- 1479 (f) the chairman for the time being of the Family Law Bar Association¹⁵;
- 1480 (g) the chairman for the time being of the Chancery Bar Association¹⁶;
- 1481 (h) the chairman for the time being of the London Common Law and Commercial Bar Association¹⁷; and
- 1482 (i) the chairman for the time being of the Bar Association for Commerce, Finance and Industry¹⁸.

¹ I.e. the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040.

² The officers of the Bar Council are elected annually by the Bar Council and hold office for one year: see the Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 10(a). Provision is made for the election and re-election of officers: see Pt II (Constitution of the General Council of the Bar) para 10(b)-(e). As to the Introduction and Constitutions see PARA 1042 note 8.

³ I.e. the Chairman of the Bar Council elected pursuant to the provisions of the Bar Council Constitution: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; Pt II (Constitution of the General Council of the Bar) para 2(a)(i). The Chairman is a member of the Council ex officio and not otherwise: Pt II (Constitution of the General Council of the Bar) para 2(a)(i).

⁴ I.e. the Vice-Chairman of the Bar Council elected pursuant to the provisions of the Bar Council Constitution: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; Pt II (Constitution of the General Council of the Bar) para 2(a)(ii). The vice-chairman and treasurer are members of the Council ex officio, but without prejudice to their membership (if any) otherwise: see Pt II (Constitution of the General Council of the Bar) para 2(a).

⁵ I.e. the Treasurer of the Bar Council elected pursuant to the provisions of the Bar Council Constitution: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; Pt II (Constitution of the General Council of the Bar) para 2(a)(iii). See also note 4.

⁶ See the text and note 3.

⁷ 'Subscriber' means any self-employed barrister or any employed barrister or registered European lawyer whose practising certificate fee to the Bar Council is paid up to date in the full amount, or who has for the time

being been specially exempted by the Bar Council from the requirement to pay a practising certificate fee to the Bar Council; and, for the purpose of attendance and entitlement to vote at the annual general meeting, 'subscriber' also means any non-practising barrister whose voluntary subscription to the Bar Council is paid up to date in the full amount, but does not include overseas or retired subscribers: Introduction and Constitutions (2008) Pt I (Introduction) para 1. As to practising and non-practising barristers, self-employed barristers and employed barristers see PARAS 1035-1037. As to the meaning of 'European lawyer' see PARA 535. As to the meaning of 'registered European lawyer' see PARA 1102 note 7.

8 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(iv)-(x). The 100 subscribers are appointed in the following proportions and in accordance with the specified requirements:

- 534 (1) 12 are appointed by the benchers of the Inns of Court (Pt II (Constitution of the General Council of the Bar) para 2(b)(iv));
- 535 (2) 12, of whom at the date of their election all must be self-employed barristers or employed barristers and at least six must be juniors, are elected by the circuits (Pt II (Constitution of the General Council of the Bar) para 2(b)(v));
- 536 (3) 15, all of whom must be self-employed barristers or employed barristers at the date of their election, are elected by the Criminal Bar Association, the Family Law Bar Association, the Chancery Bar Association, the London Common Law and Commercial Bar Association, the Intellectual Property Bar Association, the Bar European Group, the Revenue Bar Association, the Technology and Construction Bar Association, the Planning and Environment Bar Association, the Administrative Law Bar Association, the Professional Negligence Bar Association, the Commercial Bar Association, the Personal Injuries Bar Association, the Employment Law Bar Association and the Property Bar Association (Pt II (Constitution of the General Council of the Bar) para 2(b)(vi));
- 537 (4) five, all of whom must be self-employed barristers or employed barristers at the date of their election, are elected by the Bar Association for Commerce, Finance and Industry, the Crown Prosecution Service and the Government Legal Service through the Association of First Division Civil Servants, the Bar Association for Local Government and the Public Service and the Society of Justices' Clerks (Pt II (Constitution of the General Council of the Bar) para 2(b)(vii));
- 538 (5) 39, of whom at the date of their election all must be self-employed barristers or self-employed registered European lawyers, and 12 must be juniors under seven years' call or self-employed registered European lawyers of equivalent seniority since registration, 21 must be juniors over seven years' call or self-employed registered European lawyers of equivalent seniority since registration, and six must be Queen's Counsel or self-employed registered European lawyers of equivalent seniority since registration, are elected by subscribers who are self-employed barristers or self-employed registered European lawyers (Pt II (Constitution of the General Council of the Bar) para 2(b)(viii));
- 539 (6) 15, of whom at the date of their election all must be employed barristers or registered European lawyers in employment, six must be juniors under seven years' call and nine must be juniors over seven years' call or Queen's Counsel or registered European lawyers in employment of equivalent seniority since registration, are elected by subscribers who are employed barristers or registered European lawyers in employment (Pt II (Constitution of the General Council of the Bar) para 2(b)(ix)); and
- 540 (7) not more than four further, who may be co-opted by the Bar Council (Pt II (Constitution of the General Council of the Bar) para 2(b)(x)).

'Bencher' means the Masters of the Bench of any of the Inns: Pt I (Introduction) para 1. As to the Inns of Court see PARAS 1050-1057. As to the circuits see PARA 1058. Provision is made as to the qualifications and election of these members and the terms of their membership: see Pt II (Constitution of the General Council of the Bar) paras 3-7, Sch I.

9 A circuit or Bar association is entitled to nominate a person to be its member ex officio of the Bar Council in place of its leader or chairman: see the Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 9.

10 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(i). As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

11 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(i). As to the Solicitor General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

12 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(i). As to the Director of Public Prosecutions see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1066.

13 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(ii).

14 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(iii).

15 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(iii).

16 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(iii).

17 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(iii).

18 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 2(b)(iii).

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1044. Functions of the Bar Council.

The functions of the Bar Council¹ are:

- 1483 (1) to be the governing body of the Bar²;
- 1484 (2) to consider, lay down and implement general policy with regard to all matters affecting the Bar³;
- 1485 (3) to maintain the standards, honour and independence of the Bar⁴;
- 1486 (4) to promote, preserve and improve the services and functions of the Bar⁵;
- 1487 (5) to represent and act for the Bar generally as well as in its relations with others and also in matters affecting the administration of justice⁶;
- 1488 (6) to refer to the Inns' Council⁷ any general policy which affects the assets or liabilities of, or otherwise requires implementation or acceptance by, the Inns of Court⁸ (or any of them) or the Inns of Court and the Bar Educational Trust⁹;
- 1489 (7) to deal with referrals back of such policies by the Inns' Council¹⁰;
- 1490 (8) to consider all recommendations and other matters referred by the Inns' Council and the Inns of Court and the Bar Educational Trust¹¹;
- 1491 (9) to give directions to the Inns of Court and the Bar Educational Trust on matters of general policy affecting the exercise of its functions¹²;
- 1492 (10) to keep under review and amend as necessary the Consolidated Regulations¹³; and
- 1493 (11) to create a board, to be known as the Bar Standards Board, to discharge its regulatory functions¹⁴.

The Bar Council may delegate any of its functions and powers to any committee¹⁵. The Council has all appropriate powers and jurisdiction to carry out its functions including the power to raise money¹⁶.

1 Ie the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040.

2 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(a). As to the Introduction and Constitutions see PARA 1042 note 8. As to the Bar as a profession see PARA 1034.

3 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(b). And see PARA 1049.

4 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(c).

5 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(c).

6 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(c). Communications between the Bar Council and barristers relevant to the discharge of the Bar Council's functions are protected against claims for defamation by qualified privilege: *Kearns v General Council of the Bar* [2003] EWCA Civ 331, [2003] 2 All ER 534, [2003] 1 WLR 1357, CA.

7 Ie the Council of the Inns of Court: see PARA 1053. As to the establishment of the Inns' Council see PARA 1041; and as to its predecessor bodies see PARA 1040. As to the constitution and functions of the Inns' Council see PARAS 1053-1057. Reference must be made in accordance with the Introduction and Constitutions (2008) Pt I (Introduction) para 6(a) (see PARA 1048): Pt II (Constitution of the General Council of the Bar) para 1(e).

8 As to the establishment and institution of the Inns of Court see PARA 1040.

9 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(e). As to the Inns of Court and the Bar Educational Trust (formerly the Council of Legal Education) see PARA 1062. Reference back must be made in accordance with Pt I (Introduction) para 6(b) (see PARA 1048): Pt II (Constitution of the General Council of the Bar) para 1(e).

10 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(e). In pursuance of this function, the Council must reconsider the policy in question and consider the observations and recommendations of the Inns' Council in connection therewith: Pt II (Constitution of the General Council of the Bar) para 1(e).

11 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(f).

12 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(g).

13 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(h). Such review is to be carried out in consultation and agreement with the Inns' Council: Pt II (Constitution of the General Council of the Bar) para 1(h). As to the Consolidated Regulations see para 1060.

14 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(h). The Bar Standards Board must be constituted in accordance with such Standing Orders as the Council from time to time determines: see Pt II (Constitution of the General Council of the Bar) para 1(h). As to the Standing Orders see note 15. As to the Bar Standards Board see PARA 1049.

15 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 12(a). The composition, functions and powers of the Council's committees and sub-committees (including the power to establish sub-committees and to co-opt and appoint alternatives), and the appointment of the officers and the conduct of the proceedings of such committees and sub-committees must be in accordance with such Standing Orders as the Council from time to time determines: Pt II (Constitution of the General Council of the Bar) para 13. The current Standing Orders are the Standing Orders of the for Committees and Sub-committees of the Bar Council (2008) and are available on the Bar Council's website (www.barcouncil.org.uk at the date at which this volume states the law). The Council may at any time revoke a delegation: Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 12(a). As to the Bar Council's objectives in respect of its representative functions and other matters see the Standing Orders (2008) para 6. As to the delegation of representative functions to committees see PARA 1045.

16 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1. The Bar Council also has powers of investment and borrowing and is under a duty to prepare annual accounts: see Pt II (Constitution of the General Council of the Bar) paras 18-24.

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1045. The General Management Committee and the representative committees.

The principal committee to which the Bar Council¹ has delegated its representative functions² is the General Management Committee, on which the Chairman, Vice-Chairman and Treasurer of the Council³ are required to sit⁴. It is the controlling committee of the Council⁵. There are also other representative committees, reporting to the General Management Committee⁶, as follows:

- 1494 (1) the Legal Services Committee⁷;
- 1495 (2) the Training for the Bar Committee⁸;
- 1496 (3) the Professional Practice Committee⁹;
- 1497 (4) the International Relations Committee¹⁰;
- 1498 (5) the Employed Barristers Committee¹¹;
- 1499 (6) the Remuneration Committee¹²;
- 1500 (7) the Public Affairs Committee¹³;
- 1501 (8) the Equality and Diversity committees¹⁴;
- 1502 (9) the Policy and Research Group¹⁵;
- 1503 (10) the Law Reform Committee¹⁶;
- 1504 (11) the Young Barristers' Committee¹⁷; and
- 1505 (12) the European Committee¹⁸.

There is also a Finance Committee to advise the General Management Committee on all matters relating to financial management¹⁹.

Provision is made in connection with committee appointments, membership and proceedings²⁰.

1 I.e. the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040. As to the functions and powers of the Bar Council see PARA 1044.

2 I.e. under the Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 12(a): see PARA 1044 text and note 15. As to the Introduction and Constitutions see PARA 1042 note 8.

3 See the Standing Orders (2008) para 29(a), (b). As to the Chairman, Vice-Chairman and Treasurer of the Bar Council see PARA 1043. As to the Standing Orders see PARA 1044 note 15.

4 The other members of the General Management Committee are: the chairmen (or vice-chairmen in their stead) of the Legal Services, Training for the Bar, Professional Practice, International Relations, Employed Barristers, Remuneration, Law Reform, Young Barristers and European Committees and of the Policy and Research Group; two circuit leaders; one of the vice-chairmen of the Employed Barristers Committee; four representatives of the Bar Council; four additional members, of whom two must be employed barristers; an equality and diversity advisor; and the chief executive: Standing Orders (2008) para 29(c)-(h). The Chairman of the Bar Standards Board or his representative has the right to attend and speak, as has the chairman of the Law Reform Committee when matters of relevance to that committee are discussed: Standing Orders (2008) para 29. As to the Bar Standards Board see PARA 1049.

The chief executive (or other principal administrative officer) is appointed by the Bar Council for such periods and on such terms as to remuneration and otherwise as it thinks fit: Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17(a). The chief executive (and other administrative officers so appointed) must discharge all such duties as the Bar Council assigns to them respectively, and must make their services freely available to the Council and its committees and sub-committees: Pt II (Constitution of

the General Council of the Bar) para 17(a). Anything required to be done and any directions required to be exercised by, and any notice required to be given to, the chief executive may be done or exercised by, or given to, any deputy for the chief executive authorised by the General Management Committee to act in the chief executive's place (either prospectively or retrospectively, and either generally or for a particular purpose): Pt II (Constitution of the General Council of the Bar) para 17(b).

5 The terms of reference of the General Management Committee are: (1) to direct the day to day management of the Bar Council's affairs in accordance with policy decided by the Bar Council except in respect of matters of policy which fall within the terms of reference of the Bar Standards Board; (2) to keep under review all matters of policy affecting the Bar with a view to submitting proposals to the Council or the Bar Standards Board, as appropriate, for approval; (3) to consider strategic planning matters, including topics raised by representative committees; to appoint working groups as required; (4) to keep objectives and priorities under review and to ensure the efficient conduct of Council business except in respect of matters which fall within the terms of reference of the Bar Standards Board; (5) to give direction to the representative committees on Council objectives and priorities and to ensure that duplication of effort is avoided; (6) to give direction, where necessary, on the allocation of resources except resources allocated to the Bar Standards Board; (7) to scrutinise the annual budget and where necessary to determine priorities except in respect of resources allocated to the Bar Standards Board; (8) to keep under review and, where necessary, formulate proposals for the amendment of Standing Orders and the Bar Council's constitutional arrangements and all procedural matters affecting the Bar Council's business (although first consulting the Bar Standards Board in respect of matters affecting the responsibility of that body): Standing Orders (2008) para 27. The General Management Committee also exercises functions concerned with the removal of members of the Council, and ballots, and it may exercise certain functions of the chief executive: see the Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) paras 6(e), 12(b), 15(e), 17(b), Schs III, IV. The functions of the General Management Committee may themselves be delegated or exercised by the Council: see Pt II (Constitution of the General Council of the Bar) para 12(c).

The General Management Committee meets as often as its business requires (which will ordinarily be once a week during term time) and is exempt from Standing Order 68 (which requires the publication of agenda papers): Standing Orders (2008) para 30. The Chairman of the Bar (or, in his absence, the Vice-Chairman) presides at all meetings of the General Management Committee: para 31.

6 Standing Orders (2007) para 28.

7 Standing Orders (2008) para 28(a). For the terms of reference of this committee see para 32. One of the Legal Services Committee's terms of reference is to co-ordinate the work of the Access to the Bar Committee, the Information Technology Panel and the Alternative Dispute Resolution Committee: see paras 46, 47.

8 Standing Orders (2008) para 28(b). For the terms of reference of this committee see para 33.

9 Standing Orders (2008) para 28(c). For the terms of reference of this committee see para 34.

10 Standing Orders (2008) para 28(d). For the terms of reference of this committee see para 35.

11 Standing Orders (2008) para 28(e). For the terms of reference of this committee see para 39.

12 Standing Orders (2008) para 28(f). For the terms of reference of this committee see para 36.

13 Standing Orders (2008) para 28(g). For the terms of reference of this committee see para 37.

14 Standing Orders (2008) para 28(h). For the terms of reference of these committees see paras 43-45.

15 Standing Orders (2008) para 28(i). For the terms of reference of this committee see para 41.

16 Standing Orders (2008) para 28(j). For the terms of reference of this committee see para 38.

17 Standing Orders (2008) para 28(k). For the terms of reference of this committee see para 40.

18 Standing Orders (2008) para 28(l). For the terms of reference of this committee see para 42.

19 See the Standing Orders (2008) para 65, 66.

20 See the Standing Orders (2008) paras 48-58, 67-85, Schedule One (B).

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(B) PROCEDURE

1046. Meetings, voting and decisions.

The Bar Council¹ may in general hold meetings and adjourn and otherwise regulate its meetings as it thinks fit². Meetings may be summoned at any time on the request of the Chairman³ or of not less than 20 members⁴.

An annual general meeting, which every subscriber⁵ is entitled to attend, is held each year⁶. At this meeting the Council must present its annual report and accounts⁷, and any subscriber may bring forward any resolution for discussion and decision, provided that the resolution is seconded and prior notice has been given not less than 21 clear days before the day of the meeting⁸. An extraordinary general meeting may be called at the request of not less than 150 subscribers, or may be convened by the Bar Council⁹. The Council may also call a ballot of the Bar¹⁰.

Annual and extraordinary meetings of the Council are empowered to pass 'Directive Resolutions'¹¹, to which the Council is required to give effect¹². The Council must have regard, but is not bound to give effect, to any other resolution of any annual or extraordinary meeting¹³.

1 le the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040.

2 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 11(a). At least one meeting must be held in or immediately before each sitting of the Council: Pt II (Constitution of the General Council of the Bar) para 11(b), Sch II para 1. As to the Introduction and Constitutions see PARA 1042 note 8.

3 As to the officers and members of the Bar Council see PARA 1043.

4 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) Sch II para 2.

Provision is made as to the agenda, business and quorum of Bar Council meetings and for the appointment of alternates: see Pt II (Constitution of the General Council of the Bar) para 8, Sch II paras 3-5. Meetings are presided over by the Chairman: Pt II (Constitution of the General Council of the Bar) Sch II para 6. In the Chairman's absence, the Vice-Chairman presides; and, in the absence of the Vice-Chairman, the chairman of the meetings is chosen by the members present from their number: Pt II (Constitution of the General Council of the Bar) Sch II para 6. Questions arising are ordinarily decided by majority vote of those present and voting: Pt II (Constitution of the General Council of the Bar) Sch II para 8. If the question is put as an extraordinary resolution, a two-thirds' majority is required: see Pt II (Constitution of the General Council of the Bar) Sch II para 9. Provision is also made for the determination of questions on a ballot: see Pt II (Constitution of the General Council of the Bar) Sch II paras 10-12.

5 As to the meaning of 'subscriber' see PARA 1043 note 7.

6 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 14(a). Notice of the annual general meeting must be given: see Pt II (Constitution of the General Council of the Bar) para 14(b), Sch III para 1.

Provision is made as to the agenda, business and quorum of the annual general meeting and for the appointment of proxies: see Pt II (Constitution of the General Council of the Bar) para 14(b), Sch III paras 2-5, 7-9, 12-15. Meetings are presided over by the Chairman or such other person as he nominates (who is usually the Attorney General): Pt II (Constitution of the General Council of the Bar) Sch III para 6. In the absence of the Chairman and of any such person nominated by the Chairman, the Vice-Chairman presides; and, in the absence of the Vice-Chairman, the chairman of the meeting is chosen by the members present from their number: Pt II

(Constitution of the General Council of the Bar) Sch III para 6. Questions arising are ordinarily decided by majority vote of those present and voting: Pt II (Constitution of the General Council of the Bar) Sch III paras 10, 12, 13. Provision is also made for the determination of questions on a ballot: see Pt II (Constitution of the General Council of the Bar) Sch III paras 10, 11, 14.

7 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 14(a).

8 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) Sch III para 2.

9 See the Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 15(a)-(c). Provision is made as to the agenda, business and quorum of extraordinary meetings, and for the appointment of proxies: see Pt II (Constitution of the General Council of the Bar) para 15(d), Sch IV para 3. Meetings are presided over by the Chairman or such other person as he nominates: Pt II (Constitution of the General Council of the Bar) Sch III para 6, Sch IV para 3. In the absence of the Chairman and of any such person nominated by the Chairman, the Vice-Chairman presides; and, in the absence of the Vice-Chairman, the chairman of the meeting is chosen by the members present from their number: Pt II (Constitution of the General Council of the Bar) Sch III para 6, Sch IV para 3. Questions arising are ordinarily decided by majority vote of those present and voting: Pt II (Constitution of the General Council of the Bar) Sch III paras 10, 12, 13, Sch IV para 3. Provision is also made for the determination of questions on a ballot: see Pt II (Constitution of the General Council of the Bar) Sch III paras 10, 11, Sch IV para 3.

10 See the Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 15(b). Provision as to ballots is made by Pt II (Constitution of the General Council of the Bar) Sch IV para 4.

11 A Directive Resolution is any resolution of an annual or extraordinary general meeting which satisfies the following conditions: (1) when proposed and seconded, notice is given to the chief executive that it is intended to be a Directive Resolution and a written explanation is lodged of its financial implications (if any); (2) the Chairman has certified that he is satisfied that it would not, if passed, commit the Bar Council or the Bar to a policy or course of action which is not permitted or is beyond its powers; (3) the resolution is passed by a majority of two-thirds of those present and voting at the meeting (persons abstaining being disregarded); and (4) if so required by the Chairman or by 80 subscribers at, or within 14 days after, such meeting, the resolution has furthermore been passed on a ballot of two-thirds of those voting: Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 16(a), Sch V para 1. As to Directive Resolutions see further Pt II (Constitution of the General Council of the Bar) Sch V paras 2-3. As to the chief executive of the Bar Council see PARA 1045 note 5.

12 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 16(c).

13 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 16(b).

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1047. Consultation.

As the representative body of the Bar¹, the Bar Council² is entitled to be consulted on certain matters³. Thus, for example, it must be consulted by the Legal Services Commission⁴ with regard to the preparation or revision of the code of conduct to be observed by employees of that Commission in the provision of services as part of the Criminal Defence Service⁵. The Lord Chancellor⁶ must also consult with the Bar Council on certain matters relating to conditional fee agreements⁷ and before making a remuneration order⁸ relating to the payment of barristers⁹.

1 As to the Bar as a profession see PARA 1034.

2 I.e. the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040.

3 As to the offices for which barristers are specially eligible see PARAS 1124-1128.

4 As to the Legal Services Commission see generally **LEGAL AID** vol 65 (2008) PARA 17 et seq.

5 See the Access to Justice Act 1999 s 16(4) (see **LEGAL AID** vol 65 (2008) PARA 125); and as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq.

6 As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 477 et seq.

7 See the Courts and Legal Services Act 1990 s 58A(5)(b) (added by the Access to Justice Act 1999 s 27(1); and amended by SI 2005/3429). As from a day to be appointed, the Lord Chancellor must also consult with the Bar Council with regard to certain matters relating to litigation funding agreements: see the Courts and Legal Services Act 1990 s 58B(7)(b) (prospectively added by the Access to Justice Act 1999 s 28; and amended by SI 2005/3429); and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1830-1831. At the date at which this volume states the law no such day had been appointed. As to conditional fee agreements and litigation funding agreements see further PARAS 953-954, 1309; and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1830, 1832-1836.

8 I.e. an order under the Access to Justice Act 1999 s 6(4), s 13(3) or s 14(3) which relates to the payment by the Legal Services Commission of remuneration for the provision of services by persons or bodies in individual cases or by reference to the provision of services by persons or bodies in specified numbers of cases: s 25(4). See further **CIVIL PROCEDURE**; **LEGAL AID**.

9 Access to Justice Act 1999 s 25(2) (amended by SI 2005/3429).

UPDATE

1047 Consultation

NOTE 7--See also Courts and Legal Services Act 1990 s 58AA(6) (added by Coroners and Justice Act 2009 s 154(2)) which provides for consultation with regard to certain matters relating to damages-based agreements.

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1048. Implementation of policies affecting Inns of Court.

The Bar Council¹ must refer to the Inns' Council² any general policy it lays down which affects the assets or liabilities of the Inns of Court (or any of the Inns)³ or of the Inns of Court and the Bar Educational Trust⁴, or which otherwise requires implementation or acceptance by the Inns (or any of them) or the Trust⁵. The Inns' Council has the discretion to refer the policy back to the Bar Council⁶, and must refer back such a policy if a resolution of the Inns' Council to implement or accept it is not passed⁷. On referring back any such policy, the Inns' Council must also report to the Bar Council its observations and recommendations on that policy⁸. If, after considering these observations and recommendations, the Bar Council decides to amend the policy, it must refer the amended policy to the Inns' Council to provide an opportunity for further observations and recommendations⁹, in which event the Inns' Council may, or failing the passing of a resolution for implementation must, refer the amended policy, together with its observations and recommendations thereon, back to the Bar Council¹⁰.

If the Bar Council refers a general policy to the Inns' Council and it is not referred back, or it is referred back and is then returned, unamended, with a request that the Inns' Council implement or accept it, then the Inns' Council is obliged (though without accepting any obligation enforceable in law) to procure the implementation or acceptance of the policy¹¹. If, however, the Inns' Council refers any general policy back to the Bar Council, with the observation that the policy is in its opinion likely to be detrimental to any of the Inns or their members, the Inns' Council cannot be required to procure the implementation or acceptance of the policy unless it has been approved by a two-thirds' majority of the Bar Council¹².

1 le the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040.

2 le the Council of the Inns of Court: see PARA 1053 note 1. As to the establishment of the Council see PARAS 1040-1041. As to the constitution and functions of the Council today see PARAS 1053-1057.

3 As to the establishment of the Inns of Court see PARA 1039.

4 As to the Inns of Court and the Bar Educational Trust (formerly the Council of Legal Education) see PARA 1062.

5 Introduction and Constitutions (2008) Pt I (Introduction) para 6(a). As to the Introduction and Constitutions see PARA 1042 note 8.

6 Introduction and Constitutions (2008) Pt I (Introduction) para 6(b); Pt III (Constitution of the Council of the Inns of Court) para 12(a). Reference back must be done in the manner provided by the Inns' Council Constitution: Pt I (Introduction) para 6(b).

7 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 12(a).

8 Introduction and Constitutions (2008) Pt I (Introduction) para 6(b); Pt III (Constitution of the Council of the Inns of Court) para 12(b).

9 Introduction and Constitutions (2008) Pt I (Introduction) para 6(c).

10 Introduction and Constitutions (2008) Pt I (Introduction) para 6(c); Pt III (Constitution of the Council of the Inns of Court) para 12(c).

11 Introduction and Constitutions (2008) Pt I (Introduction) para 6(e); Pt III (Constitution of the Council of the Inns of Court) para 12(e). This is subject to the proviso that the Inns are not obliged to implement or accept any Bar Council policy which is contrary to any trust affecting the property or other legal obligations of the Inns or of the Inns of Court and the Bar Educational Trust (see Pt I (Introduction) para 4; and PARA 1053), to the provisions as to the cancellation or amendment of Inns' undertakings set out in Pt I (Introduction) para 5 and Pt III (Constitution of the Council of the Inns of Court) para 13 (see PARA 1053), and also to the requirement that a policy that is detrimental to the Inns' interests requires a two-thirds majority of the Bar Council (see the text and note 12); Pt I (Introduction) para 6(e); Pt III (Constitution of the Council of the Inns of Court) para 12(e).

12 Introduction and Constitutions (2008) Pt I (Introduction) para 6(d); Pt III (Constitution of the Council of the Inns of Court) para 12(d).

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B. THE BAR STANDARDS BOARD

1049. The Bar Standards Board and the regulatory committees.

The Bar Standards Board¹ is responsible for all the regulatory functions of the Bar Council². Therefore it must formulate and implement policies for, and regulate all aspects of:

- 1506 (1) education and training for the Bar³;
- 1507 (2) qualification for call to the Bar⁴;
- 1508 (3) the grant of rights of audience⁵; and
- 1509 (4) the maintenance of rules of conduct⁶;

These functions include, without limitation:

- 1510 (a) qualifications and conditions for entry including fitness for practice⁷;
- 1511 (b) all aspects of training including continuing professional development⁸;
- 1512 (c) the setting of standards for those practising at the Bar⁹;
- 1513 (d) the determination, amendment, monitoring and enforcement of rules of professional conduct, including disciplinary rules¹⁰; and
- 1514 (e) investigation and prosecution of complaints against barristers and students except in so far as those matters are assigned by statute or under a resolution of the Bar Council to an external body¹¹.

In addition to its other terms of reference¹², the Board supervises and monitors the work and conduct of the regulatory committees¹³, as follows:

- 1515 (i) the Standards Committee¹⁴;
- 1516 (ii) the Qualifications Committee¹⁵;
- 1517 (iii) the Quality Assurance Committee¹⁶;
- 1518 (iv) the Complaints Committee¹⁷;
- 1519 (v) the Education and Training Committee¹⁸;

It has additional powers to delegate its powers to new committees, sub-committees, panels, working parties and so on as necessary¹⁹. Also, the Finance Committee of the Bar Council provides advice as necessary²⁰. Provision is made in connection with committee appointments, membership and proceedings²¹.

As from a day to be appointed the Board is an approved regulator for the purposes of the Legal Services Act 2007²².

1 The members of the Bar Standards Board are: a chairman and a vice-chairman, one of whom must be a practising barrister and the other a lay member; seven practising barristers not being members of the Bar Council; six lay members; the Chairman of each of the Standards, Qualifications, Quality Assurance and Complaints Committees (see notes 14-17) or any successor committees ex-officio, who must be chosen from amongst the Board's barristers and lay members; and the Chairman or Vice-Chairman of the Bar and a representative of the Council of the Inns of Court are entitled to attend and speak at any meeting of the Bar

Standards Board but have no vote: Standing Orders (2008) para 21. As to the Chairman or Vice-Chairman of the Bar see PARA 1043. As to the Council of the Inns of Court see PARA 1053. As to the Standing Orders see PARA 1044 note 15.

2 le the General Council of the Bar: see PARA 1042 note 1. As to the establishment of the Bar Council see PARA 1040. As to the functions and powers of the Bar Council see PARA 1044.

3 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(d)(i). This function includes (but without limitation) education and training in the academic and vocational stages of training and pupillage, continuing education and training, and testing, by assessment, examinations or otherwise, of students, barristers and other qualified lawyers: Pt II (Constitution of the General Council of the Bar) para 1(d)(i)(a)-(e). As to the stages of training see PARAS 1067-1072. As to pupillage see PARAS 1080-1097. See further PARA 1063 et seq.

4 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(d)(ii). As to call to the Bar generally see PARAS 1075-1078.

5 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(d)(ii), (iii). As to the Board's authority to grant rights of audience and rights to conduct litigations see PARAS 497, 498, 509, 512, 1162, 1109. As to rights to conduct litigation generally see **COURTS** vol 10 (Reissue) PARAS 331-332.

6 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 1(d)(iv). As to the professional conduct of barristers generally see PARA 1149 et seq.

7 See the Standing Orders (2008) para 7(a)(i).

8 See the Standing Orders (2008) para 7(a)(ii).

9 See the Standing Orders (2008) para 7(a)(iii).

10 See the Standing Orders (2008) para 7(a)(iv).

11 See the Standing Orders (2008) para 7(a)(v).

12 The other terms of reference of the Bar Standards Board are: (1) to discharge the functions assigned to the Bar Council by the Consolidated Regulations and to approve changes to the Consolidated Regulations or any regulations replacing them; (2) to ensure that equal opportunity and diversity issues are taken into account in respect of regulatory matters and to keep under review the impact of the Bar Council's policies on the promotion of equal opportunities and diversity in the profession; (3) to ensure that the Bar Council's functions are regulated to a standard appropriate to protect the interests of consumers of the Bar's services consistently with the duty to act in the interests of justice; (4) to liaise with the Bar Council, the Inns' Council, the judges, other committees and external bodies on regulatory matters as and when required; (5) to prepare and keep under review a plan for the development and effective discharge of regulatory functions; (6) to prepare annual estimates of expenditure for submission to the Finance Committee to enable it to discharge its functions; (7) to approve the allocation of resources to support the matters for which it is responsible and to oversee the monitoring of the expenditure against budget allocations; (8) to prepare an annual report on its work for the Bar Council and for publication: Standing Orders (2008) para 7(c)-(j). As to the Consolidated Regulations see PARA 1060.

13 Including any sub-committees or others to whom regulatory responsibilities have been delegated, and to monitor and ensure the just operation of disciplinary tribunals and other panels assigned to determine whether barristers are guilty of professional misconduct or inadequate professional service or ought to be suspended from practice by reason of medical unfitness or criminal charges or convictions or appeals therefrom: Standing Orders of the Bar Council (2007) para 7(b).

14 See the Standing Orders (2008) para 9. For the terms of reference for this committee see para 17. The members of this committee, the Qualifications Committee (see note 15) and the Quality Assurance Committee (see note 16) are: a chairman and three vice-chairmen of whom two must be lay members and two must be practising barristers; between three and five lay members; not fewer than six and not more than 12 practising barristers not being members of the Bar Council except that the Chairman of the Qualifications Committee shall ensure that the Qualifications Committee has a sufficient number of barristers (not being members of the Bar Council) to enable it at all times to carry out its business expeditiously and effectively: para 22. The Chairman and Vice-Chairman of the Board are ex officio members of the regulatory committees: para 24.

15 See the Standing Orders (2008) para 9. For the terms of reference for this committee see para 18. See also note 13.

16 See the Standing Orders (2008) para 9. For the terms of reference for this committee see para 19. See also note 13.

17 For the terms of reference for this committee see the Standing Orders (2008) para 20. The members of this committee are: a chairman who must be a practising barrister of at least 20 years' practising experience and four vice-chairmen of whom two must be lay members and two must be practising barristers; ten lay members; subject to a minimum of ten, a number of practising barristers (not being members of the Bar Council) to enable the Committee in the judgement of the Chairman to carry out its business expeditiously: see para 23. The Chairman and Vice-Chairman of the Board are ex officio members of the regulatory committees: para 24.

18 For the terms of reference for this committee see the Standing Orders (2008) para 20A. The members of this committee are: a chairman and three vice-chairmen of whom two must be lay members and two must be practising barristers; between three and five lay members; not fewer than six and not more than 12 practising barristers not being members of the Bar Council except that the Chairman of the Qualifications Committee must ensure that the Qualifications Committee has a sufficient number of barristers (not being members of the Bar Council) to enable it at all times to carry out its business expeditiously and effectively; at least two members who are senior legal academics with experience of vocational training; a representative of the Council of the Inns of Court and one of the Training for the Bar Committee who may not be voting members: para 22A. The Chairman and Vice-Chairman of the Board are ex officio members of the regulatory committees: para 24.

19 See the Standing Orders (2008) paras 10-16.

20 See the Standing Orders (2008) para 65, 66.

21 See the Standing Orders (2008) paras 25, 26, 67-85, Schedule One (A).

22 See the Legal Services Act 2007 s 20, Sch 4 para 1; and PARA 358 et seq. The Legal Services Act 2007 refers to the General Council of the Bar (see PARA 1042 note 1). However the body responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

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C. THE INNS OF COURT

(A) IN GENERAL

1050. Constitution and membership of the Inns of Court.

The Inns of Court (namely, the Inner Temple, the Middle Temple, Gray's Inn and Lincoln's Inn), which represent the oldest form of organisation of the Bar¹, are voluntary unincorporated societies². Whilst the four Inns are independent of each other, they have similar constitutions, are of equal standing and act together in matters affecting their common interest through the medium of the Inns' Council³. The Inns have agreed, along with the Bar Council⁴, on certain regulations which govern the admission of students and call to the Bar⁵. They also founded and fund the Inns of Court and the Bar Educational Trust⁶.

The principal functions exercised individually by the Inns are the letting of accommodation to barristers for use as professional chambers⁷; the provision of law libraries, common rooms and dining facilities to benchers⁸, barristers and students; financial assistance to new entrants to the profession through the award of scholarships and bursaries to students and young barristers; and contribution to the training of students and young barristers through dining and the organisation of moots and talks.

The property of each Inn is vested in trustees, who are appointed from among the benchers, and is held on charitable trust for the furtherance of the study and practice of law⁹.

Every barrister must belong to one of the Inns of Court and a barrister will not be permitted by the benchers to cease to be a member of an Inn of Court without undertaking not to practise¹⁰. A person who has been expelled from one of the Inns will not be admitted as a member of any of the others¹¹.

1 As to the Bar as a profession see PARA 1034.

2 As to the establishment of the Inns of Court see PARA 1039. See also *Incorporated Council of Law Reporting for England and Wales v A-G* [1972] Ch 73 at 96, [1971] 3 All ER 1029 at 1048, CA, where excerpts from the charters of the Inner Temple and Clifford's Inn are set out.

3 I.e the Council of the Inns of Court: see PARA 1053 note 1. As to the establishment of the Inns' Council see PARAS 1040-1041. As to the constitution and functions of the Inns' Council today see PARAS 1053-1057.

4 I.e the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040. As to the Bar Council today see PARAS 1042-1048. As to the mutuality of operation and interest between the Bar Council and the Inns' Council see PARA 1041.

5 See the Consolidated Regulations (2007); and PARA 1060.

6 As to the Inns of Court and the Bar Educational Trust (formerly the Council of Legal Education) see PARA 1062.

7 As to chambers see PARA 1241.

8 As to the benchers see PARAS 1051-1052.

9 See (1967) 117 NLJ 647.

- 10 See *Neate v Denman* (1874) LR 18 Eq 127.
- 11 Fort De Laud cap 49, ed Amos, p 186.

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(B) THE BENCHERS

1051. Authority of the benchers.

The benchers are the governing body of each of the Inns of Court¹. They have sole authority² to admit students to the Inn³, to call students to the Bar⁴, and to appoint members of the Inn to their own number. The benchers also decide on the amount which the members of the Inn are obliged to pay and on the application of the moneys so raised. The duties of the benchers of an Inn in relation to the admission, education and call of students, and to barrister members are carried out to maintain the standards of the profession for the benefit of the both Bar and the public⁵.

Disciplinary authority over members of the Inn is also vested in the benchers⁶. However, except in so far as it relates to the domestic affairs of the Inns, such authority has now been delegated to the Inns' Council in respect of barristers⁷. The Inns' Council appoints disciplinary tribunals to adjudicate allegations of professional misconduct or breach of proper professional standards preferred against barristers by the Complaints Committee of the Bar Standards Board⁸. The benchers' powers include expulsion and suspension of any member from the Inn⁹. They may also disbench one of their own number¹⁰. If the benchers disbench one of their own number, they must give reasons for their action¹¹. The benchers may readmit to their Inn a former barrister who has been disbarred either at his own request or for a disciplinary offence¹².

1 As to the establishment and institution of the Inns of Court see PARA 1039.

2 An appeal may be made against a decision of the benchers: see PARA 1052.

3 The authority of the benchers is derived from the Consolidated Regulations (2007) and the internal regulations of each Inn. For the common law position see *R v Lincoln's Inn Benchers* (1825) 4 B & C 855. As to the Consolidated Regulations see PARA 1060. As to the regulations governing the admission of students see PARAS 1063-1066.

4 As to the requirements for call to the Bar see PARAS 1075-1078. As to the Bar as a profession see PARA 1034. Call to the Bar is the act of the Inn and is complete when the candidate is admitted by the benchers of the Inn: *Re Perara* (1887) 3 TLR 677.

5 See *Seymour v Butterworth* (1862) 3 F & F 372.

6 Absolute privilege attached to the disciplinary proceedings of the benchers, and accordingly absolute privilege attaches to disciplinary proceedings against barristers: see *Lincoln v Daniels* [1962] 1 QB 237, [1961] 3 All ER 740, CA; *Marrinan v Vibart* [1963] 1 QB 528, [1962] 3 All ER 380, CA. Communications with the Bar Council (eg complaining of a barrister's conduct) are not absolutely privileged (*Lincoln v Daniels*) but are protected by qualified privilege (*Kearns v General Council of the Bar* [2003] EWCA Civ 331, [2003] 2 All ER 534, [2003] 1 WLR 1357, CA). The benchers retain the jurisdiction to deal with (1) complaints as to the conduct of barristers which are neither allegations of professional misconduct nor breach of proper professional standards; and (2) complaints of misconduct against student members who are not barristers.

7 Ie the Council of the Inns of Court: see PARA 1053 note 1. As to the establishment of the Inns' Council see PARAS 1040-1041. As to the constitution and functions of the Council today see PARAS 1053-1057.

8 As to the Complaints Committee see PARA 1251. As to the Bar Standards Board see PARA 1049.

9 The powers and duties of the benchers are set out in the internal regulations of each Inn. For the common law position see *Seymour v Butterworth* (1862) 3 F & F 372 at 381; *Hudson v Slade* (1862) 3 F & F 390 at 410-411.

10 See eg *Manisty v Kenealy* (1876) 24 WR 918. A bencher guilty of professional misconduct would be disbenched as well as disbarred.

11 The powers and duties of the benchers are set out in the internal regulations of each Inn. See also *Report of the Proceedings before the Judges as Visitors of the Inns of Court on the Appeal of A Hayward Esq, QC* (1846) p 126.

12 See the Consolidated Regulations (2007) regs 56, 57; and PARA 1079. An application for readmission from a former barrister who has been disbarred for a disciplinary offence must be referred by the Inn concerned to the Complaints Committee, which will consider the application and make a recommendation to the Inn; and whilst the Inn would normally follow this recommendation, the final decision to allow or refuse the application, and whether to impose conditions on any readmission allowed, remains with the Inn: see reg 57(c)-(e).

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1052. Appeals from decisions of the benchers.

Any member or would-be member of an Inn of Court¹ who considers himself aggrieved by any order or decision of the benchers² may appeal to the judges of the High Court of Justice, sitting as Visitors to the Inns of Court³. This form of appeal represents the ancient and usual method of redress for any grievance in the Inns and no recourse lies to the ordinary courts⁴, although the decisions of judges sitting as Visitors are susceptible to judicial review⁵. In the same way, the courts have no jurisdiction to entertain a claim brought by a member against the benchers of an Inn relating to the property of the Inn⁶, unless the benchers themselves refer the applicant to the courts⁷. The benchers may themselves resort to the courts, however, in order to recover arrears due from members or to recover possession of their property⁸. When such claims are brought against a member of the Inn, the courts will not entertain any defence which questions the propriety or lawfulness of the benchers' decisions; the only remedy open to an aggrieved member is to appeal to the judges in their capacity as Visitors⁹.

1 As to the establishment and institution of the Inns of Court see PARA 1039.

2 As to the authority of the benchers see PARA 1051.

3 See *Booreman's Case* (1641) March 177 pl 235; *R v Gray's Inn* (1780) 1 Doug KB 353 at 355; *Cunningham v Wegg* (1787) 2 Bro CC 241. See also the Supreme Court Act 1981 s 44; and **COURTS** vol 10 (Reissue) PARA 619 (as from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed). As to the jurisdiction of the Visitors generally see PARA 1284 et seq. Until 1837 no appeal lay to the judges against the refusal of one of the Inns to admit a student, but since then the judges, by consent of the Inns, hear appeals against a refusal to admit: see the *Report of the Proceedings before the Judges as Visitors of the Inns of Court on the Appeal of A Hayward Esq, QC* (1846) p 95; Pearce *Guide to the Inns of Court* (2nd Edn, 1855) p 386. As to refusals to call to the Bar see *Harvey's Case* (1821); First and Second Reports of the Select Committee on the Inns of Court (1834); Pearce *Guide to the Inns of Court* (2nd Edn, 1855) p 405. For corresponding powers of a judge in British colonies see *A-G of Gambia v Njie* [1961] AC 617, [1961] 2 All ER 504, PC.

The procedure governing appeals by students is set out in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (Hearings Before the Visitors Rules 2002) r 16.

4 *R v Gray's Inn* (1780) 1 Doug KB 353; *Manisty v Kenealy* (1876) 24 WR 918. Cf *Hudson v Slade* (1862) 3 F & F 390 (action for assault against benchers of the Middle Temple for forcibly seizing documents from the plaintiff at a disciplinary inquiry left to the jury). Thus the courts will not grant a mandatory order to the benchers of an Inn to admit a person as a student (*R v Lincoln's Inn Benchers* (1825) 4 B & C 855; and see also *R v Barnard's Inn* (1836) 5 Ad & El 17) or to call a student to the Bar (*R v Gray's Inn*), and the same would apply a fortiori to a refusal to appoint a barrister as a bencher. Additionally, whilst a student has an inchoate right to be called to the Bar, a barrister has no inchoate right to be called to the bench of his Inn; and if a barrister, even of the rank of Queen's Counsel, is proposed for election by one bencher and seconded by another, the benchers may nevertheless refuse to elect the candidate and need give no reasons for their refusal (*Report of the Proceedings before the Judges as Visitors of the Inns of Court on the Appeal of A Hayward Esq, QC* (1846) pp 89, 90, 158).

5 See *R v Visitors to the Inns of Court, ex p Calder* [1994] QB 1, [1993] 2 All ER 876, CA, in which it was held that decisions of judges sitting as Visitors are susceptible to judicial review on the limited grounds that the Visitor had acted outside his jurisdiction, had abused his powers, or had acted in breach of the rules of natural justice.

6 *Booreman's Case* (1641) March 177 pl 235; *Cunningham v Wegg* (1787) 2 Bro CC 241.

7 *Rakestraw v Brewer* (1728) 2 P Wms 511.

8 See eg *Earl of Rosslyn v Jodrell* (1815) 4 Camp 303; *Manisty v Kenealy* (1876) 24 WR 918. Such claims are generally brought in the name of the trustees in whom the property of the Inn is vested.

9 *Manisty v Kenealy* (1876) 24 WR 918.

UPDATE

1052 Appeals from decisions of the benchers

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

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D. THE COUNCIL OF THE INNS OF COURT

(A) CONSTITUTION AND FUNCTIONS OF THE COUNCIL OF THE INNS OF COURT

1053. Constitution.

The Council of the Inns of Court (the Inns' Council)¹ was constituted by the Inns of Court on 1 January 1987 as part of a new structure for the governance of the profession under which the Inns relinquished to the Bar Council² principal responsibility for the formulation of policy for all matters affecting the profession³. In particular, the Inns have undertaken, without accepting any obligation enforceable in law and within the constraints of the trusts affecting their property and their other legal obligations, to accept and to implement the general policies laid down from time to time by the Bar Council⁴.

The Inns have agreed to constitute the Inns' Council for the purposes and with the authority, powers and duties set out in the Inns' Council Constitution⁵. The Constitution is published, as from time to time amended⁶, in a combined document with the Bar Council Constitution⁷ and the Constitution of the Inns of Court and the Bar Educational Trust⁸.

1 The Council of the Inns of Court, as from time to time constituted, is commonly referred to as the Inns' Council: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; and the Consolidated Regulations (2007) reg 1, Sch 1. As to the Introduction and Constitutions see PARA 1042 note 8. As to the Consolidated Regulations see PARA 1060. As to the establishment and institution of the Inns of Court see PARA 1039.

2 Ie the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040. As to the Bar Council today, and the relationship between the Bar Council and the Council of the Inns of Court, see PARAS 1042-1048.

3 As to the establishment of the Inns' Council see PARA 1041; and as to its predecessor bodies, and the structure for the governance of the profession before 1987, see PARA 1040.

4 See the Introduction and Constitutions (2008) Pt I (Introduction) para 4; and see further PARA 1054. This agreement is, however, subject to restrictions. Any Inn may cancel or amend its undertaking by giving not less than 12 months' notice in writing to the Bar Council: Pt I (Introduction) para 5(a); Pt III (Constitution of the Council of the Inns of Court) para 13(a). Without prejudice to the right of an Inn to give a further notice of cancellation or amendment, any notice amending (as opposed to cancelling) an undertaking is of no effect unless within two months of receiving the notice the Bar Council has given the Inn notice in writing that it consents to the operation thereof: Pt I (Introduction) para 5(b); Pt III (Constitution of the Council of the Inns of Court) para 13(b). Subject to this, on the expiration of any notice of cancellation or amendment, the undertaking on the part of the Inn giving notice is deemed for all relevant purposes to be cancelled or amended in the manner stated in the notice: Pt I (Introduction) para 5(c); Pt III (Constitution of the Council of the Inns of Court) para 13(c). Any Inn giving a notice of cancellation may specify therein the general policy of the Bar Council (if any) which has caused it to give the notice, and if any Inn so specifies it is not under any obligation during the currency of the notice to implement or accept the general policy so specified or, unless the Inn concerned otherwise determines, any other general policy of the Bar Council referred or returned to the Inns' Council (see PARA 1048) during the currency of the notice: Pt I (Introduction) para 5(d); Pt III (Constitution of the Council of the Inns of Court) para 13(d). Any Inn giving notice of amendment may specify therein the general policy, if any, which has caused it to give the notice and if any Inn so specifies it is not (subject to the Bar Council's consent) under any obligation during the currency of the notice to implement or accept that policy except to the extent that such policy is consistent with its undertaking as amended: Pt I (Introduction) para 5(e); Pt III (Constitution of the Council of the Inns of Court) para 13(e).

5 Introduction and Constitutions (2008) Pt I (Introduction) para 2(b). 'Inns' Council Constitution' means the Constitution of the Council of the Inns of Court set out in the Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court): Pt I (Introduction) para 1.

6 The Inns' Council Constitution may be amended by written agreement of the Inns, provided that without the prior written consent of the Bar Council no amendment may be made to it which would alter directly or indirectly the composition of the Inns' Council or the voting rights of members: Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 16. As to the officers and members of the Inns' Council see PARA 1055. As to the voting rights of Inns' Council members see PARA 1057.

7 As to the Bar Council Constitution see PARA 1042.

8 As to the Inns of Court and the Bar Educational Trust (formerly the Council of Legal Education) see PARA 1062.

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1054. Implementation of Bar Council policies.

The Inns' Council¹ is in general obliged to accept and implement such general policies of the Bar Council² which affect the assets or liabilities of the Inns of Court (or any of the Inns)³ or of the Inns of Court and the Bar Educational Trust⁴, or which otherwise require implementation or acceptance by the Inns or the Trust⁵. The Inns' Council is entitled to make observations and recommendations on such policies and to refer them back to the Bar Council for amendment⁶, but may refuse to implement them only: (1) if they are contrary to any trust affecting the property or other legal obligations of the Inns or the Trust⁷; or (2) if so permitted by the provisions of the Inns' Council Constitution⁸ relating to the cancellation or amendment of Inns' undertakings⁹. There are also restrictions on the implementation of policies which are detrimental to the Inns' interests¹⁰. Where a policy is to be implemented or accepted, each of the Treasurers must report the matter to the benchers¹¹ of his Inn and steps must be taken to secure the expeditious implementation of the policy¹².

1 Ie the Council of the Inns of Court: see PARA 1053 note 1. As to the establishment of the Inns' Council see PARAS 1040-1041.

2 Ie the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040; and as to the Bar Council today see PARAS 1042-1048.

3 As to the establishment and institution of the Inns of Court see PARA 1039.

4 As to the Inns of Court and the Bar Educational Trust (formerly the Council of Legal Education) see PARA 1062.

5 See the Introduction and Constitutions (2008) Pt I (Introduction) para 6(a), (e); Pt III (Constitution of the Council of the Inns of Court) para 12(e); and PARA 1048. As to the Introduction and Constitutions see PARA 1042 note 8.

6 See the Introduction and Constitutions (2008) Pt I (Introduction) para 6(b), (c); Pt III (Constitution of the Council of the Inns of Court) para 12(a)-(c); and PARA 1048.

7 Ie as set out in the Introduction and Constitutions (2008) Pt I (Introduction) para 4: see PARA 1053.

8 As to the meaning of 'Inns' Council Constitution' see PARA 1053 note 5.

9 See the Introduction and Constitutions (2008) Pt I (Introduction) para 6(e); Pt III (Constitution of the Council of the Inns of Court) para 12(e); and PARA 1048. The provisions of the Inns' Council Constitution relating to the cancellation or amendment of Inns' undertakings are those set out in Pt I (Introduction) para 5 and Pt III (Constitution of the Council of the Inns of Court) para 13 (see PARA 1053).

10 The implementation of a policy that is detrimental to the Inns' interests requires a two-thirds majority of the Bar Council: see the Introduction and Constitutions (2008) Pt I (Introduction) para 6(d); Pt III (Constitution of the Council of the Inns of Court) para 12(d); and PARA 1048.

11 As to the meaning of 'bencher' see PARA 1043 note 8.

12 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 12(f).

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1055. Officers and members.

The Inns' Council¹ is composed of:

- 1520 (1) the President²;
- 1521 (2) the Treasurers³;
- 1522 (3) eight members appointed by the Inns of Court⁴;
- 1523 (4) the Chairman, Vice-Chairman and Treasurer of the Bar Council⁵; and
- 1524 (5) the chairman for the time being of the Education and Training Committee⁶.

1 Ie the Council of the Inns of Court: see PARA 1053 note 1. As to the establishment of the Inns' Council see PARAS 1040-1041. As to the constitution of the Council see PARA 1053. As to meetings of the Council see PARA 1057.

2 Ie the President of the Inns' Council elected pursuant to the provisions of the Constitution of the Council of the Inns of Court: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; Pt III (Constitution of the Council of the Inns of Court) para 2(a). The President is elected by the Treasurers of the Inns (see the text and note 3) and the eight other Inns' appointees (see the text and note 4) who for the time being are members of the Council; he holds office for three years and is eligible for re-election: Pt III (Constitution of the Council of the Inns of Court) para 3. He must be a bencher of one of the Inns but must not otherwise than by election as President be a member of the Council: Pt III (Constitution of the Council of the Inns of Court) para 3. If the President resigns or ceases for any reason to be able to act, a successor must be elected as soon thereafter as possible: Pt III (Constitution of the Council of the Inns of Court) para 3. As to the Introduction and Constitutions see PARA 1042 note 8. As to the meaning of 'bencher' see PARA 1043 note 8.

3 Ie the Treasurers of the Inns: see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; Pt III (Constitution of the Council of the Inns of Court) para 2(b)(i). The Treasurers remain members of the Council so long as they hold office as Treasurers: Pt III (Constitution of the Council of the Inns of Court) para 4. Each Inn is entitled to arrange alternates for the Treasurers, with the same entitlements to vote: Pt III (Constitution of the Council of the Inns of Court) para 6. As to voting rights see PARA 1057.

4 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 2(b)(ii). Two of these members are appointed by each Inn for terms of between one and three years and must be members of that Inn: Pt III (Constitution of the Council of the Inns of Court) para 5. An Inn is entitled to re-appoint, or revoke the appointment, of any of its members: Pt III (Constitution of the Council of the Inns of Court) para 5. Each Inn is entitled to arrange alternates for its appointees, with the same entitlements to vote: Pt III (Constitution of the Council of the Inns of Court) para 6. As to the establishment and institution of the Inns of Court see PARA 1039.

5 Ie the 'Officers': see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; Pt III (Constitution of the Council of the Inns of Court) para 2(c). As to the election of these officers to the Bar Council see PARA 1043.

6 Ie the 'Education Chairman': see the Introduction and Constitutions (2008) Pt I (Introduction) para 1; Pt III (Constitution of the Council of the Inns of Court) para 2(d). As to the Education and Training Committee see PARA 1049.

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1056. Functions.

The principal functions of the Inns' Council¹ are:

- 1525 (1) to be the representative body of the Inns with power to bind the Inns by its decision on any matter referred to it by the Bar Council² or any one or more of the Inns³;
- 1526 (2) to formulate and co-ordinate policies for the Inns⁴;
- 1527 (3) to serve as a channel of communication between the Inns themselves and between the Inns and the Bar Council⁵;
- 1528 (4) to procure the implementation and acceptance by the Inns of general policies laid down by the Bar Council⁶;
- 1529 (5) to make regular reports⁷ to the Bar Council⁸;
- 1530 (6) to appoint disciplinary tribunals⁹;
- 1531 (7) to keep under review and amend as necessary the regulations governing the Inns and the Bar Council¹⁰; and
- 1532 (8) to perform all such other functions as the Inns' Council may consider necessary or desirable to facilitate the functions described above¹¹.

The Council is also empowered from time to time to amend the Constitution of the Inns of Court and the Bar Educational Trust¹².

1 Ie the Council of the Inns of Court: see PARA 1053 note 1. As to the establishment of the Council see PARAS 1040-1041. As to the constitution of the Council see PARA 1053. As to meetings of the Council see PARA 1057.

2 Ie the General Council of the Bar: see PARA 1042 note 1. As to the creation of the Bar Council see PARA 1040. As to the Bar Council today, and the relationship between the Bar Council and the Inns' Council, see PARAS 1042-1048.

3 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(a). As to the Introduction and Constitutions see PARA 1042 note 8.

4 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(b).

5 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(c). The function of the Inns' Council as a channel of communication is expressed to be for the purposes of considering the general policies of the Bar Council referred to the Inns' Council by the Bar Council in accordance with Pt I (Introduction) para 6(a) (see PARA 1048) and submitting proposals and suggestions to the Bar Council regarding matters which in the opinion of the Inns' Council require the Bar Council's consideration: Pt III (Constitution of the Council of the Inns of Court) para 1(c)(i), (ii).

6 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(d). This function is expressed to be subject to the terms of the Inns' Council Constitution: Pt III (Constitution of the Council of the Inns of Court) para 1(d).

7 Ie reports on the progress made and any difficulties experienced by the Inns in implementing or accepting the general policies of the Bar Council and any other matters which in the opinion of the Inns' Council ought to be brought to the Bar Council's attention: Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(e)(i), (ii).

8 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(e).

9 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(f). Such tribunals must be appointed in accordance with Annexe K (Disciplinary Tribunals Regulations): Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(f). As to proceedings before disciplinary tribunals see PARAS 1269-1280. The text of para 1(f) refers to 'Annexe M' but it is assumed that Annexe K is intended.

10 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) paras 1(g), 15. The regulations governing the Inns and the Bar Council are the Consolidated Regulations (2007): Introduction and Constitutions (2008) Pt I (Introduction) para 1. This function must be exercised in consultation and agreement with the Bar Council: Pt III (Constitution of the Council of the Inns of Court) paras 1(g), 15. As to the Consolidated Regulations see PARA 1060.

11 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 1(h).

12 See the Introduction and Constitutions (2008) Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 15. This power is subject to the requirement that the Trust must continue to be managed for exclusively charitable purposes, and it requires the written consent of the Bar Council: see Pt I (Introduction) para 3 (proviso); Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 15; and PARA 1062.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(1) THE PROFESSION/(iii) Organisation of the Bar/D. THE COUNCIL OF THE INNS OF COURT/(B) Procedure/1057. Meetings, voting and decisions.

(B) PROCEDURE

1057. Meetings, voting and decisions.

Meetings of the Inns' Council¹ are chaired by the President², must generally be held at least monthly³, and may be attended by:

- 1533 (1) the Inns' Council members⁴;
- 1534 (2) the Sub-Treasurer of the Inner Temple and the Under Treasurers of the other three Inns⁵;
- 1535 (3) the chief executive of the Bar Council⁶; and
- 1536 (4) specified persons invited⁷ to attend in an advisory capacity⁸.

Only the President, Treasurers and Inns' appointees⁹ are entitled to vote at meetings and they may vote on any matter at any meeting¹⁰. Unless a special vote is demanded¹¹, decisions are taken by majority vote¹², and are binding on each of the Inns¹³.

1 Ie the Council of the Inns of Court: see PARA 1053 note 1. As to the establishment of the Inns' Council see PARAS 1040-1041. As to the functions of the Inns' Council see PARA 1056.

2 See the Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 9(a). As to the Introduction and Constitutions see PARA 1042 note 8. As to the President of the Council see PARA 1055 note 2. In the absence of the President from any meeting of the Council, the Treasurers of the Inns and the eight other Inns' appointees who for the time being are members of the Council (see PARA 1055) must appoint one of themselves to take the chair: Pt III (Constitution of the Council of the Inns of Court) para 9(a).

3 See the Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 9(b). Exceptions are during the long vacation or if no matters have arisen for consideration: Pt III (Constitution of the Council of the Inns of Court) para 9(b)(i), (ii).

4 See the Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 8.

5 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 8(a).

6 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 8(b). As to the creation of the Bar Council (ie the General Council of the Bar) see PARA 1040. As to the Bar Council today see PARAS 1042-1048. As to the chief executive of the Bar Council see PARA 1045 note 5.

7 Ie invited by the Inns' Council, the President, any of the Treasurers of the Inns or the Chairman of the Bar Council: Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 8(c).

8 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 8(c).

9 Ie the Council members, excluding the Chairman, Vice-Chairman and Treasurer of the Bar Council and the chairman of the Education and Training Committee of the Bar Council: see PARA 1053.

10 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) paras 3-5, 7, 8.

11 A special vote may be demanded at a Council meeting by the President, one of the Treasurers of the Inns, or one of the eight other Inns' appointees to the Council, on any matter except the election of the President (see PARA 1055 note 2), the election of the chairman of a meeting, or the adjournment of a meeting: Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 10(b).

12 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 10(a). In the case of an equality of votes, the chairman of the meeting has a second or casting vote: Pt III (Constitution of the Council of the Inns of Court) para 10(a).

13 Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 10(c). A decision on any matter on which a special vote has been demanded requires not less than ten votes (including that of the President) cast in its favour for such decision to be binding: Pt III (Constitution of the Council of the Inns of Court) para 10(b).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(1) THE PROFESSION/(iii) Organisation of the Bar/E. OTHER PROFESSIONAL ASSOCIATIONS/1058. Circuits.

E. OTHER PROFESSIONAL ASSOCIATIONS

1058. Circuits.

There are six associations of barristers, known as circuit messes or circuits, which correspond to the six circuits into which England and Wales are divided for the purposes of the administration of justice, namely, the Northern Circuit, the North Eastern Circuit, the Midland Circuit, the South Eastern Circuit, the Western Circuit and the Wales and Chester Circuit¹. The function of the circuits is to promote standards among, and to provide support, advice and representation for, their members, who are barristers working in those areas. There is also now a seventh circuit, the European Circuit of the Bar in England and Wales, which aims to bring together barristers across Europe.

¹ The circuits were formerly constituted within the Bar's Code of Conduct (see the 4th Edn (1989) para 14) but recent editions have made no reference to the circuits, which are now administered on a non-statutory basis and governed by their own constitutions. Further information on the circuits can be found on the Bar Council website (www.barcouncil.org.uk, at the date at which this volume states the law), and the websites of the relevant circuits (which at the date at which this volume states the law were: www.northerncircuit.org.uk (the Northern Circuit); www.northeasterncircuit.co.uk (the North Eastern Circuit); www.midlandcircuit.co.uk (the Midland Circuit); www.walesandchestercircuit.org.uk (the Wales and Chester Circuit); www.southeastcircuit.org.uk (the South Eastern Circuit); www.westerncircuit.org.uk (the Western Circuit); www.europeancircuit.com (the European Circuit)). As to the Code of Conduct see PARA 1150.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(1) THE PROFESSION/(iii) Organisation of the Bar/E. OTHER PROFESSIONAL ASSOCIATIONS/1059. Specialist bar associations.

1059. Specialist bar associations.

A number of specialist bar associations have been established in recent years. Reflecting the increasing trend towards specialisation, they cater for barristers who practise in particular fields of specialisation. They have applied the existing circuit principles in a professional rather than a geographical context¹. The specialist bar associations are:

- 1537 (1) the Administrative Law Bar Association;
- 1538 (2) the Bar European Group;
- 1539 (3) the Bristol and Cardiff Chancery Bar Association;
- 1540 (4) the Chancery Bar Association;
- 1541 (5) the Commercial Bar Association;
- 1542 (6) the Criminal Bar Association;
- 1543 (7) the Employment Law Bar Association;
- 1544 (8) the Family Law Bar Association;
- 1545 (9) the Intellectual Property Bar Association;
- 1546 (10) the Justices' Clerks Society;
- 1547 (11) the London Common Law and Commercial Bar Association;
- 1548 (12) the Midland Chancery and Commercial Bar Association;
- 1549 (13) the Northern Chancery Bar Association;
- 1550 (14) the Northern Circuit Commercial Bar Association;
- 1551 (15) the Parliamentary Bar Mess;
- 1552 (16) the Personal Injuries Bar Association;
- 1553 (17) the Planning and Environmental Bar Association;
- 1554 (18) the Professional Negligence Bar Association;
- 1555 (19) the Property Bar Association;
- 1556 (20) the Revenue Bar Association; and
- 1557 (21) the Technology and Construction Bar Association.

There are also four employed bar associations:

- 1558 (a) the Association of First Division Civil Servants (Legal);
- 1559 (b) the Association of First Division Civil Servants (CPS);
- 1560 (c) the Bar Association for Commerce, Finance and Industry; and
- 1561 (d) the Bar Association for Local Government and the Public Service.

¹ The specialist Bar associations are non-statutory and each is governed by its own constitution. Further information on the specialist bar associations can be found on the Bar Council website (www.barcouncil.org.uk, at the date at which this volume states the law).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(2) EDUCATION AND TRAINING/(i) Administration of the Education of Barristers/1060. The Consolidated Regulations.

(2) EDUCATION AND TRAINING

(i) Administration of the Education of Barristers

1060. The Consolidated Regulations.

The Consolidated Regulations¹ (made jointly by the Inns' Council² and the Bar Standards Board³) govern the manner in which a person may be admitted to one of the Inns of Court⁴ and qualify as a barrister. They regulate admission and term keeping⁵, the training and assessment of students⁶, call to the Bar⁷, and pupillage⁸. The regulations also make provision for the call to the Bar of lawyers holding relevant qualifications, and of certain distinguished academics, without fulfilling some or all of the requirements applicable to the generality of students⁹.

Any breach of any requirement or provision of the regulations, or of any term of any undertaking given under them, or any misstatement of fact in any declaration made under them, may involve disciplinary action¹⁰. However, the Bar Standards Board may exempt any person wholly or in part from obligations with regard to training and assessment, or pupillage and entry into practice¹¹, and its Qualifications Committee¹² may modify or dispense with any requirement or provision of these regulations (including any term of any undertaking given there under), or excuse any breach of or non compliance with any such requirement or provision¹³.

The Bar Standards Board and the Inns' Council in consultation with one another may from time to time amend the regulations¹⁴.

1 Ie the Consolidated Regulations of the Inns of Court and the General Council of the Bar (2007). Where necessary in this title, this document will be referred to as the 'Consolidated Regulations (2007)'. The Bar Standards Board has applied to the Secretary of State to replace the Consolidated Regulations (2007) with the 'Bar Training Regulations' to simplify the rules wherever possible and to put in place a framework under which responsibility for training and regulation is vested in the Board. At the date at which this volume states the law the Secretary of State had not yet approved the new regulations.

2 As to the meaning of 'Inns' Council' see PARA 1053 note 1.

3 'Bar Standards Board' means the board established under the Standing Orders of the General Council of the Bar to examine and oversee the regulatory function of the Council: Consolidated Regulations (2007) Sch 1. As to the Bar Standards Board generally see PARA 1049.

4 As to the establishment and institution of the Inns of Court see PARA 1039.

5 See the Consolidated Regulations (2007) Pt I (regs 2-10); and PARAS 1063-1066, 1073-1074, 1076.

6 See the Consolidated Regulations (2007) Pt II (regs 11-20); and PARAS 1067-1072.

7 See the Consolidated Regulations (2007) Pt III (regs 21-25), regs 56, 57; and PARAS 1075, 1077-1078.

8 See the Consolidated Regulations (2007) Pt V (regs 41-54); and PARAS 1080-1096.

9 See the Consolidated Regulations (2007) Pt IV (regs 26-40); and PARAS 1078, 1098-1108.

10 See the Consolidated Regulations (2007) reg 60. As to student discipline see PARA 1073; and as to disciplinary proceedings generally see PARA 1254 et seq.

11 See the Consolidated Regulations (2007) reg 58(a).

12 'Qualifications Committee' means the Qualifications Committee of the Bar Standards Board as defined in the Standing Orders of the General Council of the Bar: Consolidated Regulations (2007) Sch 1. As to the Qualifications Committee see PARA 1049.

13 See the Consolidated Regulations (2007) reg 58(b). Any petition for the exercise of this power of the Qualifications Committee must be addressed to the Masters of the Bench through the Under Treasurer who must forward the same to the Qualifications Committee for adjudication together with such observations thereon as the Masters of the Bench may think fit to make: reg 58(c). 'Masters of the Bench' means the Masters of the Bench of the Inn to which the applicant seeks admission or of which the student or barrister concerned is a member: Sch 1. 'Applicant' means a person applying for admission to an Inn as a student: Sch 1.

14 See the Consolidated Regulations (2007) reg 59. The Bar Standards Board, acting in consultation with the Inns Council has the power to amend reg 30(d) and Pt V (regs 41-54) (see PARAS 1080-1098); and the Inns Council, acting in consultation with the Bar Standards Board, has the power to amend the remainder of the regulations.

Until a day to be appointed amendments do not have effect unless approved by the Secretary of State: see the Courts and Legal Services Act 1990 s 29, Sch 4 para 8 (s 29, Sch 4 substituted by the Access to Justice Act 1999 s 41, Sch 5 paras 1, 2; and the Courts and Legal Services Act 1990 Sch 4 paras 8, 17; amended by SI 2003/1887; and prospectively repealed by the Legal Services Act 2007, ss 208(1), 210, Sch 21, paras 83, 100(a), Sch 23). The Secretary of State may also require the regulations to be altered where they unduly restrict rights of audience: Courts and Legal Services Act 1990 Sch 4 para 17 (as so substituted, amended and prospectively repealed).

UPDATE

1060 The Consolidated Regulations

NOTE 14--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(2) EDUCATION AND TRAINING/(i) Administration of the Education of Barristers/1061. The Legal Services Consultative Panel and the Legal Services Board.

1061. The Legal Services Consultative Panel and the Legal Services Board.

Until a day to be appointed the Legal Services Consultative Panel's duties include assisting in the maintenance and development of standards in the education, training and conduct of persons offering legal services¹. As from a day to be appointed these functions will be performed by the Legal Services Board².

1 See the Courts and Legal Services Act 1990 s 18A; and PARAS 327-328. As from a day to be appointed the Courts and Legal Services Act 1990 s 18A is repealed by the Legal Services Act 2007 s 208, 210, Sch 21 paras 83, 84(c), Sch 23. At the date at which this volume states the law no such day had been appointed.

2 See the Legal Services Act 2007 ss 2-11, Sch 1; and PARA 303 et seq. At the date at which this volume states the law these provisions had not yet been fully brought into force.

UPDATE

1061 The Legal Services Consultative Panel and the Legal Services Board

TEXT AND NOTES--These provisions brought fully into force 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(2) EDUCATION AND TRAINING/(i) Administration of the Education of Barristers/1062. The Inns of Court and the Bar Educational Trust.

1062. The Inns of Court and the Bar Educational Trust.

The Inns of Court and the Bar Educational Trust hold and administer the assets previously held by the Council of Legal Education¹, other than those that have been transferred to the Inns of Court School of Law². Until 1 February 1997 the Council was fully responsible for the examination and training of student members of the Inns and for the administration of the School of Law; from that date, the School of Law ceased to be administered by the Council and became a company limited by guarantee, and such of the assets of the Council as were not henceforth held on trust for the purposes of the School (the 'Trust Fund') were held by and for the purposes of the Trust³.

The Trustees⁴ are required to apply the income from the Trust Fund⁵ for the purposes of education and training for the Bar and in particular:

- 1562 (1) the education and training of pupils⁶;
- 1563 (2) the continuing education of young and recently qualified barristers⁷; and
- 1564 (3) the formulation and implementation of policies for, and the regulation of all aspects of, education and training, qualification for call, the grant of rights of audience⁸, and the maintenance of rules of conduct⁹.

1 The Council of Legal Education was established in 1852 by resolutions passed by the four Inns of Court: see further PARA 1039. The Council was reconstituted on and after 1 February 1997 as the Trustees of the Inns of Court and Bar Educational Trust: see the Introduction and Constitutions (2008) Pt I (Introduction) para 3(d). As to the Introduction and Constitutions see PARA 1042 note 8.

2 See the Introduction and Constitutions (2008) Pt I (Introduction) para 3(a); Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 2. Provision is made as to the trustees of the Trust (see Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) paras 3-5) and their proceedings, duties and powers (see Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) paras 7-14). The Constitution of the Trust may (subject to the requirement that the trustees may not hold or apply any of the Trust's moneys or other assets for any purpose or in any manner not exclusively charitable: see Pt I (Introduction) para 3 proviso; and note 5) from time to time be amended by the Inns' Council with the written consent of the Bar Council: Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 16. As to the Inns' Council see PARAS 1053-1057. As to the Bar Council see PARAS 1042-1048.

3 See the Introduction and Constitutions (2008) Pt I (Introduction) para 3(d); Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) paras 2, 7.

4 The Trustees consist of a chairman nominated by the President of the Inns' Council after consultation with the Chairman of the Bar Council, four Trustees nominated by the Inns' Council and four Trustees nominated by the Bar Council: the Introduction and Constitutions (2008) Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 3.

5 And, with the approval of the Inns' Council and the Bar Council, the capital: the Introduction and Constitutions (2008) Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 6. The Trustees may not, however, hold or apply any of the Trust's moneys or other assets for any purpose or in any manner not exclusively charitable: Pt I (Introduction) para 3 proviso.

6 Introduction and Constitutions (2008) Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 6(a).

7 Introduction and Constitutions (2008) Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 6(b).

8 As to rights of audience generally see PARA 1109 et seq.

9 Introduction and Constitutions (2008) Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 6(c). These are the charitable functions formerly carried on by the Council of Legal Education which, following the constitution of the School of Law as a limited company, have been carried on by the Bar Council: see Pt IV (Constitution of the Inns of Court and the Bar Educational Trust) para 6(c). As to these functions see Pt II (Constitution of the Bar Council) para 1(d); and PARA 1044.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(2) EDUCATION AND TRAINING/(ii) Admission, Education and Examination of Students/A. ADMISSION OF STUDENTS/1063. Requirements for admission.

(ii) Admission, Education and Examination of Students

A. ADMISSION OF STUDENTS

1063. Requirements for admission.

In general¹, no person may be called to the Bar² of England and Wales unless he has completed both the academic and vocational stages of training³, and a person must have been admitted as a student⁴ to one of the Inns before he can attend a vocational course⁵. In order to become a student, an applicant⁶ must usually possess certain educational qualifications⁷ and must produce two certificates of good character⁸. Certain persons are not eligible for admission⁹.

A person who is admitted or readmitted¹⁰ as a student member of an Inn must observe such regulations as may from time to time be made by the Inn concerning the conduct and discipline of its students¹¹, keep his Inn informed of any change of address¹² or relevant change in his status¹³, and may not practise as a solicitor¹⁴ in any part of the United Kingdom save in the exercise of his existing rights of audience (if any) as a solicitor¹⁵. He must declare his intention to comply with these requirements in the admission declaration he is required to sign¹⁶, in which he must also declare his date of birth¹⁷ and the occupations (if any) in which he is engaged¹⁸ and give undertakings as to whether:

- 1565 (1) he has been convicted of any relevant criminal offence in any part of the world, or has criminal proceedings pending against him in respect of any relevant offence¹⁹;
- 1566 (2) he has had a bankruptcy order made against him in any part of the world²⁰;
- 1567 (3) he has been made the subject of an order, in civil proceedings in any jurisdiction, restricting his conduct in any manner²¹;
- 1568 (4) he knows of any other matter which might reasonably be expected to affect the mind of a bencher²² considering his application²³; and
- 1569 (5) he has read and understood the terms of the call declaration²⁴.

A person who makes a false statement in his admission declaration or in relation to his fees may be expelled from his Inn²⁵.

1 The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078.

3 Consolidated Regulations (2007) reg 11(c). As to academic and vocational stages of training see PARAS 1067-1072.

4 'Student' means a person who is a member of an Inn but who has not yet been called to the English Bar: Sch 1. 'Inn' means one of the four Inns of Court, namely the Honourable Societies of Lincoln's Inn, Inner Temple, Middle Temple and Gray's Inn: Sch 1. As to the establishment and institution of the Inns of Court see PARA 1039.

5 Consolidated Regulations (2007) reg 2(c). As to fees on admission see reg 6. As to the bar vocational course see PARA 1069.

6 As to the meaning of 'applicant' see PARA 1060 note 13.

7 See the Consolidated Regulations (2007) reg 2; and PARA 1064.

8 See the Consolidated Regulations (2007) reg 3; and PARA 1065.

9 See the Consolidated Regulations (2007) reg 4; and PARA 1066.

10 A person who has ceased to be a student otherwise than by call to the Bar may apply for readmission as a student: the Consolidated Regulations (2007) reg 5(b). A student who is readmitted is treated for the purposes of Pt II (regs 11-20) (see PARAS 1067-1072) as having been admitted on the date of his readmission, provided that if under any provision of Pt II such a student would have been entitled, had he not ceased to be a student, to any exemption, concession or advantage to which by reason of such treatment he is not entitled, the Director of the Bar Standards Board may in his discretion apply such provision to him to such extent and with such modifications, if any, as he thinks fit: reg 20(c). 'Director of the Bar Standards Board' means the Director of the Bar Standards Board or successor post by whatever name called: Sch 1. The Director of the Bar Standards Board may from time to time delegate to any member of the Board's permanent staff any of the powers conferred upon him by the Consolidated Regulations, and may from time to time revoke any such delegation: reg 20(b). As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

11 Consolidated Regulations (2007) Sch 4 para 4(a).

12 Consolidated Regulations (2007) Sch 4 para 6.

13 Eg if he is convicted of a relevant criminal offence, has a bankruptcy or section 42 order made against him, becomes disqualified under the Company Directors Disqualification Act 1986, or engages for a period exceeding three months in an occupation other than one stated in the declaration or otherwise previously notified: Consolidated Regulations (2007) Sch 4 para 4(b)(i)-(iv). The student must also carry out any order made in response to such an event: Sch 4 para 4(b). 'Relevant criminal offence' means any criminal offence committed in any part of the world (including an offence the conviction for which is a spent conviction within the meaning of the Rehabilitation of Offenders Act 1974), except: (1) an offence committed in the United Kingdom which is a fixed penalty offence for the purposes of the Road Traffic Offenders Act 1988 or any statutory modification or replacement thereof for the time being in force; (2) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that applicable to such a fixed penalty offence; and (3) an offence whose main ingredient is the unlawful parking of a motor vehicle: Consolidated Regulations (2007) Sch 1. As to spent convictions within the meaning of the Rehabilitation of Offenders Act 1974 see s 1(1); and **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 661. As to fixed penalty offences see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1093 et seq. 'Bankruptcy order' means a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world: Consolidated Regulations (2007) Sch 1. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq. A section 42 order is an order made under the Supreme Court Act 1981 s 42 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 258). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed. As to disqualification orders under the Company Directors Disqualification Act 1986 see **COMPANIES** vol 15 (2009) PARA 1575 et seq.

'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Isle of Man nor the Channel Islands are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 3.

14 Ie a solicitor of the Supreme Court of England and Wales: see the Courts and Legal Services Act 1990 s 119(1); the Consolidated Regulations (2007) Sch 1; the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001; and see PARA 600 et seq. As to the Code of Conduct see PARA 1150. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

15 Consolidated Regulations (2007) Sch 4 para 2(b). As to solicitors' rights of audience see PARA 732. As to the safeguarding of rights of audience when a person ceases to practise as a solicitor in order to train as a barrister see the Courts and Legal Services Act 1990 s 31C; and PARA 508.

16 Consolidated Regulations (2007) reg 5(a), Sch 4 paras 2(b), 4, 6.

17 Consolidated Regulations (2007) Sch 4 para 1.

- 18 Consolidated Regulations (2007) Sch 4 para 2(a).
- 19 Consolidated Regulations (2007) Sch 4 para 3(a).
- 20 Consolidated Regulations (2007) Sch 4 para 3(b).
- 21 Consolidated Regulations (2007) Sch 4 para 3(c). This undertaking requires the disclosure of, for example, a section 42 order, any civil or other injunction restricting the declarant's conduct in any matter, the imposition of a *Grepe v Loam* order (ie an order restraining a litigant from making applications without the court's permission: see *Grepe v Loam* (1887) 37 ChD 168; and **CIVIL PROCEDURE** vol 11 (2009) PARA 15), or disqualification as a director of companies, but this list is not exhaustive: see the Consolidated Regulations (2007) Sch 4 note 4.
- 22 As to the benchers see PARAS 1051-1052.
- 23 Consolidated Regulations (2007) Sch 4 para 3(d). The declarant must include any incident of behaviour which if known by a bencher might cause him to consider the application more carefully: by way of illustration, such incidents or behaviour might include the receipt of a police caution or a breach of the rules of any professional body leading to a restriction of the right to practise or membership: see Sch 4 note 5.
- 24 Consolidated Regulations (2007) Sch 4 para 5. The call declaration is the further declaration the student will be called upon to sign before he is called to the Bar: see PARA 1077.
- 25 See the Consolidated Regulations (2007) reg 7(c)(i), (1); and PARA 1073.

UPDATE

1063 Requirements for admission

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTES 13, 14--Appointed day is 1 October 2009: SI 2009/1604.

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1064. Educational qualifications.

A person may be admitted to an Inn¹ as a student² whether or not he has completed the academic stage of training³. However, a person who has not completed the academic stage must:

- 1570 (1) hold a degree⁴ (other than an honorary degree) passed at a standard which the Bar Standards Board⁵ considers satisfactory in any subject or subjects⁶;
- 1571 (2) be reading as a student for such a degree at a university in the United Kingdom or the Republic of Ireland⁷; or
- 1572 (3) have been accepted by the Masters of the Bench⁸ as a mature student⁹.

1 As to the meaning of 'Inn' see PARA 1063 note 4. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'student' see PARA 1063 note 4.

3 Consolidated Regulations (2007) reg 2(a), Sch 2. A person who has completed the academic stage is qualified for admission to the vocational stage: Sch 2. As to the academic and vocational stages of training, and the completion thereof, see PARAS 1067-1072.

4 For this purpose, a 'degree' is a degree obtained by examination after a minimum of three years' study, although a research degree obtained by thesis, or a degree obtained by examination in less than three years, may be considered on its merits, including (if necessary) the qualifications on which registration for the degree was based: Consolidated Regulations (2007) Sch 2 para (a).

5 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

6 Consolidated Regulations (2007) Sch 2 paras (a), (c). If the degree was conferred by a university outside the United Kingdom or the Republic of Ireland, the applicant must have obtained a Certificate of Academic Standing from the Bar Standards Board: Sch 2 para (c). The Consolidated Regulations refer to the Bar Council (as to which see PARA 1042 note 1). However in practice the body currently responsible for the training of barristers is the Bar Standards Board (see PARA 1049). As to the meaning of 'United Kingdom' see PARA 1063 note 13. As to Certificates of Academic Standing see PARA 1071. A licence conferred by the former University College of Buckingham before that college was granted university status is also acceptable: Sch 2 para (a). As to the meaning of 'applicant' see PARA 1060 note 13.

7 Consolidated Regulations (2007) Sch 2 para (b). The applicant must have passed the English Language Examination for the General Certificate of Education at Ordinary Level or have obtained the General Certificate of Secondary Education in English Language (Sch 2 para (b)); exceptionally, this requirement may be satisfied by the applicant satisfying the Director of the Bar Standards Board that he holds an equivalent qualification or otherwise demonstrating his competence in the English language to the satisfaction of the Director of the Bar Standards Board (Sch 2 para (b)). As to the meaning of 'Director of the Bar Standards Board' see PARA 1063 note 10.

8 The Masters of the Bench may delegate to any committee specified by them any of the functions conferred on them by the Consolidated Regulations (2007) Sch 2: reg 2(b). Such delegation may be permanent or otherwise and may be revoked at any time: reg 2(b). A student who fails to carry out any order of the Masters may be expelled from the Inn or otherwise punished: see reg 7(c)(iii); and PARA 1073. As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

9 Consolidated Regulations (2007) Sch 2 para (d). Such an applicant must: (1) have had considerable experience or shown exceptional ability in an academic, professional, business or administrative field; (2) ordinarily have reached the age of 25; (3) have obtained such academic and vocational qualifications as the Masters of the Bench may consider equivalent to a degree conferred by a University in the United Kingdom or the Republic of Ireland or have attained such standard of general education as the Masters of the Bench may consider sufficient; (4) be able to satisfy the Masters of the Bench that there is a good reason why he should not be required to obtain a qualifying law degree; and (5) be considered by the Masters of the Bench to be suitable for admission as a mature student: Sch 2 para (d)(i)-(v). As to the meaning of 'qualifying law degree' see PARA 1067. Applications by mature students are subject to a fee: see reg 19(i), Sch 10 para 4.

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1065. Certificates of good character.

An applicant¹ for admission to an Inn² as a student³ must produce two certificates of good character⁴. Applicants from the United Kingdom⁵ must produce certificates from two responsible persons resident in the United Kingdom who have known the applicant for one year or more⁶. Overseas applicants⁷ educated in the United Kingdom⁸ must produce one such certificate⁹, and a certificate from the past or present head of the school or college, or a tutor at such school or college, in general education in the United Kingdom¹⁰. Other overseas applicants must produce a certificate from the past or present head of the school or college, or a tutor at such school or college, last attended by the applicant¹¹, and a certificate from a judge or magistrate or any other responsible person in the country in which the applicant is permanently resident¹².

The certificates so produced must comply to the satisfaction of the Masters of the Bench¹³ with the specified requirements¹⁴, although the Masters may accept in place of any certificate such other evidence of good character, and may make such further inquiries as to an applicant's character, as they think fit¹⁵.

1 As to the meaning of 'applicant' see PARA 1060 note 13. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'Inn' see PARA 1063 note 4.

3 As to the meaning of 'student' see PARA 1063 note 4.

4 Consolidated Regulations (2007) reg 3(a). Certificates may not be from a spouse or close relative: reg 3(b). A certificate must be in whichever is appropriate of the forms set out in Sch 3 (ie Certificate A or B) with such modifications as may be appropriate: reg 3(c).

5 As to the meaning of 'United Kingdom' see PARA 1063 note 13.

6 Consolidated Regulations (2007) Sch 3 para 1. The certificates must be in the form specified in Certificate A: Sch 3 para 1.

7 'Overseas applicant' means an applicant whose permanent address is not in the United Kingdom: Consolidated Regulations (2007) Sch 1.

8 Ie overseas applicants who have received (or are receiving) the whole or part of their general education in the United Kingdom: Consolidated Regulations (2007) Sch 3 para 2.

9 The certificate must be in the form specified in Certificate A: Consolidated Regulations (2007) Sch 3 para 2.

10 Consolidated Regulations (2007) Sch 3 para 2. The education certificate must be in the form specified in Certificate B: Sch 3 para 2.

11 Consolidated Regulations (2007) Sch 3 para 3. The certificate must be in the form specified in Certificate B: Sch 3 para 3.

12 Consolidated Regulations (2007) Sch 3 para 3. The certificate must be in the form specified in Certificate A: Sch 3 para 3.

- 13 As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.
- 14 Consolidated Regulations (2007) reg 3(a).
- 15 Consolidated Regulations (2007) reg 3(d), (e).

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1066. Grounds for refusal of admission.

An applicant¹ for admission to an Inn² as a student³ may be refused admission if he is engaged in any occupation which in the opinion of the Masters of the Bench⁴ is incompatible with the position of a student seeking call to the Bar⁵. A person may also be refused admission if he:

- 1573 (1) has been convicted of a relevant criminal offence⁶;
- 1574 (2) has had a bankruptcy order⁷ or directors disqualification order⁸ made against him or has entered into an individual voluntary arrangement⁹ with his creditors¹⁰; or
- 1575 (3) has been prohibited from practising any profession¹¹,

and the circumstances are, in the opinion of the Masters, such as to make his admission undesirable¹². Admission may also be refused on grounds of unsuitability in any other case at the Masters' discretion¹³.

1 As to the meaning of 'applicant' see PARA 1060 note 13. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'Inn' see PARA 1063 note 4.

3 As to the meaning of 'student' see PARA 1063 note 4.

4 As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

5 Consolidated Regulations (2007) reg 4(a). As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078.

6 Consolidated Regulations (2007) reg 4(b). As to the meaning of 'relevant criminal offence' see PARA 1063 note 13.

7 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.

8 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.

9 As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.

10 Consolidated Regulations (2007) reg 4(c).

11 Consolidated Regulations (2007) reg 4(d).

12 Consolidated Regulations (2007) reg 4(b)-(d).

13 Consolidated Regulations (2007) reg 4(e).

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B. THE ACADEMIC STAGE OF TRAINING

1067. Qualifying law degrees.

Students¹ are educated in two stages, the academic stage and the vocational stage², both of which must be completed before a student can be called to the Bar³. Generally, a student may not enter the vocational stage until he has completed the academic stage⁴, the usual means of which is by obtaining a qualifying law degree⁵.

A qualifying law degree is a single honours degree in law, a joint honours degree, or a mixed honours degree passed at a standard of lower second class or above⁶. It must have been conferred by a university in the United Kingdom⁷ or the Republic of Ireland upon the successful completion of a course of study, acceptable to the Bar Standards Board⁸, which includes the study of the foundations of legal knowledge, and such other optional law subjects as may from time to time be required by the Bar Standards Board⁹, and the passing of appropriate assessments and examinations therein¹⁰.

The 'foundations of legal knowledge' are:

- 1576 (1) obligations I (contract);
- 1577 (2) obligations II (tort);
- 1578 (3) criminal law;
- 1579 (4) public law;
- 1580 (5) property law;
- 1581 (6) equity and the law of trusts; and
- 1582 (7) foundations of EU law¹¹.

1 As to the meaning of 'student' see PARA 1063 note 4. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Consolidated Regulations (2007) reg 11(a).

3 Consolidated Regulations (2007) reg 11(c). As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078. Certain degrees and courses enable a student to complete both stages at the same time: see PARA 1072.

4 Consolidated Regulations (2007) reg 11(b). Permission to enter the vocational stage before completion of the academic stage may be given by the Director of the Bar Standards Board in exceptional circumstances: reg 11(b). As to the meaning of 'Director of the Bar Standards Board' see PARA 1063 note 10.

5 Consolidated Regulations (2007) reg 12(a)(i). As to completion of the academic stage without gaining a qualifying law degree see PARA 1068.

6 Consolidated Regulations (2007) reg 12(b), Sch 1. The requirement that the degree must have been passed at a standard of lower second class or above may in exceptional circumstances be waived at the discretion of the Director of the Bar Standards Board: reg 12(b). Applications for waivers are subject to a fee: see reg 19(ii), Sch 10 para 3.

7 As to the meaning of 'United Kingdom' see PARA 1063 note 13.

8 In deciding whether a course of study is acceptable to it, the Bar Standards Board must have regard to the provision of adequate learning resources: Consolidated Regulations (2007) Sch 1.

9 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

10 Consolidated Regulations (2007) Sch 1. These rules are applicable to a degree conferred upon the successful completion of a course of study begun on or after 1 September 1995. Where a degree is conferred upon the successful completion of a course of study begun before that date, it is only a qualifying degree for these purposes if it is a degree conferred by a university in the United Kingdom or Republic of Ireland, a degree conferred by the Council for National Academic Awards before its dissolution on 31 March 1993, or a Licence in Law conferred by the former University College of Buckingham before that college was granted university status, and if it includes subjects which the Bar Standards Board considers to be sufficiently equivalent to the six core subjects (ie contract, tort, criminal law, land law, constitutional and administrative law, and equity and trusts): Sch 1.

11 Consolidated Regulations (2007) Sch 1. These are the subjects the study of which is prescribed by the Bar Standards Board for the purpose of obtaining a qualifying law degree by a course of study begun on or after 1 September 1995 and by the Common Professional Examination Board for inclusion in any Common Professional Examination course beginning on or after 1 September 1996: Sch 1.

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1068. The Common Professional Examination.

A person who has not gained a qualifying law degree¹ may complete the academic stage of training² by:

- 1583 (1) obtaining a degree in any discipline at a standard of lower second class or above³; or
- 1584 (2) being accepted by an Inn⁴ as a mature student⁵,

and by successfully completing a Common Professional Examination ('CPE') course⁶.

A CPE course is a course in preparation for a CPE approved by the Joint Academic Stage Board⁷ or a course in preparation for a Law Society-recognised Diploma in Law approved by the CPE Board⁸ which includes a study of the foundations of legal knowledge⁹ and one other area of legal study, and assessments and examinations in those subjects¹⁰. In order to be certified as having completed the academic stage, a student attending a Common Professional Examination course or attempting any assessments and examinations in such a course must comply with any rules or regulations in relation thereto approved by the Joint Academic Stage Board and for the time being in force in the institution approved by that Board to provide the course or to conduct the examination¹¹.

1 As to the meaning of 'qualifying law degree' see PARA 1067. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Both the academic and vocational stages of training must be completed before a student can be called to the Bar, and a student cannot generally enter the vocational stage until he has completed the academic stage: see the Consolidated Regulations (2007) reg 11(b), (c); and PARA 1067. As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078. Certain degrees and courses, however, enable a student to complete both stages at the same time: see PARA 1072.

3 Consolidated Regulations (2007) regs 12(a)(ii), (b), 13(a). The requirement that the degree must have been passed at a standard of lower second class or above may in exceptional circumstances be waived at the discretion of the Director of the Bar Standards Board: reg 12(b). As to the meaning of 'Director of the Bar Standards Board' see PARA 1063 note 10. A person is only eligible to complete the academic stage by attending a Common Professional Examination course if his qualifications are within Sch 2 para (a), (c) or (d) (see PARA 1064), which specify the types of non-law degree the holding of which render a person admissible as a student (and therefore eligible to take the course): reg 13(a).

4 As to the meaning of 'Inn' see PARA 1063 note 4.

5 Consolidated Regulations (2007) reg 12(a)(ii), 13(a). As to acceptance as a mature student see Sch 2 para (d); and PARA 1064.

6 Consolidated Regulations (2007) reg 12(a)(ii). Depending on the student's circumstances, he may be exempted from certain sections of the course: reg 12(a)(ii).

7 'Joint Academic Stage Board' means the successor to the CPE Board (see note 8): Consolidated Regulations (2007) Sch 1.

8 'CPE Board' means the Common Professional Examination Board set up pursuant to resolutions passed by the Council of the Inns of Court and the Law Society, and which administers any Common Professional Examination course specified in the Consolidated Regulations (2007) regs 12-14, or any successor to that board which is established for the purposes of administering any such Common Professional Examination course: Sch 1.

9 As to the foundations of legal knowledge see PARA 1067.

10 Consolidated Regulations (2007) Sch 1. These rules are applicable to a course begun on or after 1 September 1996. A course begun before that date need only include the six core subjects: Sch 1. As to the six core subjects see PARA 1067 note 10. The Bar Standards Board may appoint such Boards of Examiners as from time to time it thinks fit to exercise its powers in relation to examinations and assessment; and it may from time to time delegate to a Board of Examiners, or to the Director of the Bar Standards Board or any other member of the Board's permanent staff, any of its powers in relation to examination and assessment, and may from time to time revoke such a delegation: reg 20(a), Sch 1. As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

11 Consolidated Regulations (2007) reg 13(b).

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C. THE VOCATIONAL STAGE OF TRAINING

1069. The Bar Vocational Course.

The second stage of a student's¹ training is the vocational stage, which must be completed after the academic stage and before the student can be called to the Bar². A person completes the vocational stage by attending and being certified as having successfully completed a vocational course³, which is a course designed to provide instruction in the skills, knowledge and attitudes required by those who intend to become practising barristers in the territory of any member state⁴ and which is recognised by the Bar Standards Board⁵ as satisfying the requirements of the vocational stage⁶. In order to be certified as having completed the vocational stage, a student attending a vocational course or attempting any assessments and examinations in such a course must comply with any rules or regulations in relation thereto approved by the Bar Standards Board and for the time being in force in the institution approved by the Board to provide the course or to conduct the assessment and examinations⁷.

A person who wishes to complete the vocational stage of training must do so within seven years of completing the academic stage⁸, and may in certain circumstances be required to have a Certificate of Academic Standing⁹.

1 As to the meaning of 'student' see PARA 1063 note 4. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 See the Consolidated Regulations (2007) reg 11(b), (c); and PARAS 1067-1068. Certain degrees and courses enable a student to complete both stages at the same time: see PARA 1072. As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078.

3 Consolidated Regulations (2007) reg 16(a)(i). A person who has registered for the Bar Examination on or before 21 July 1997 may complete the vocational stage by passing that examination instead of a vocational course: reg 16(a)(ii). As to the Bar Examination see Sch 12. A fee is payable for the examination: see reg 19(ii), Sch 10 para 5.

4 'Member state' means a member state of the European Community: Consolidated Regulations (2007) Sch 1. As to the meaning of 'practising barrister' see PARA 1035 note 2. As to barristers' right to practise see PARA 1153.

5 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

6 Consolidated Regulations (2007) Sch 1.

7 Consolidated Regulations (2007) reg 17.

8 See the Consolidated Regulations (2007) reg 15; and PARA 1070.

9 See PARA 1071.

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1070. Time limits for completion of vocational stage.

Students¹ must complete the vocational stage of training² within seven years of completing the academic stage³. The calculation of this period depends upon the method by which the academic stage was completed: thus a student who completed the academic stage by obtaining a qualifying law degree⁴, passing the Common Professional Examination⁵ or gaining a Diploma in Law⁶ must complete the vocational stage within the period of seven years from 1 October in the year in which he obtained his degree, passed the examination or gained his diploma⁷, while a student who completed the academic stage by being granted exemption from certain sections of the Common Professional Examination or Diploma in Law examinations and then passing examinations in the outstanding sections⁸ must complete the vocational stage within the period of seven years from 1 October in the year in which he completed the degree by virtue of which he was granted exemption from those sections⁹. These periods may, however, be extended for a period not exceeding seven years at the discretion of the Director of the Bar Standards Board¹⁰.

1 As to the meaning of 'student' see PARA 1063 note 4. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to completion of the vocational stage see PARA 1069.

3 Consolidated Regulations (2007) reg 15(a), Sch 11. As to the academic stage see PARAS 1067-1068.

4 Ie in accordance with the Consolidated Regulations (2007) reg 12(a)(i). As to completion of the academic stage by obtaining a qualifying law degree see PARA 1067.

5 Ie in accordance with the Consolidated Regulations (2007) reg 12(a)(ii). As to completion of the academic stage by passing the Common Professional Examination see PARA 1068.

6 Ie in accordance with the Consolidated Regulations (2007) reg 12(a)(ii). As to completion of the academic stage by gaining a recognised Diploma in Law see PARA 1068.

7 Consolidated Regulations (2007) Sch 11.

8 As to completion of the academic stage by this method see PARA 1068.

9 Consolidated Regulations (2007) Sch 11.

10 Consolidated Regulations (2007) reg 15(b), (c). As to the meaning of 'Director of the Bar Standards Board' see PARA 1063 note 10. The Director of the Bar Standards Board may extend the qualification periods if he certifies that he is satisfied that either the student has complied with such requirements as to courses of study, written tests or otherwise as the Director may have imposed as a condition for the granting of a Certificate of Extension of Academic Stage Qualifications, or if there are special reasons why the period should be extended without further study or tests: reg 15(b). A fee is payable, both for the certification and the tests, but may be waived: see reg 19(iii), Sch 10 para 2.

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1071. Certificates of Academic Standing.

Certain students¹ are ineligible for admission to the vocational stage of training² unless they have been granted a Certificate of Academic Standing by the Bar Standards Board³. They are:

- 1585 (1) students who obtain a qualifying law degree⁴ following a course of study at two or more institutions⁵;
- 1586 (2) students with degrees from foreign universities⁶ who have successfully completed a Common Professional Examination course⁷; and
- 1587 (3) mature students⁸ who have successfully completed a Common Professional Examination course⁹.

Certificates of Academic Standing must be applied for by the student¹⁰ and once granted remain in force for seven years from 1 October in the year of issue¹¹.

1 As to the meaning of 'student' see PARA 1063 note 4. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to completion of the vocational stage see PARA 1069.

3 Consolidated Regulations (2007) reg 14. As to the meaning of 'Bar Standards Board' see PARA 1060 note 3. Subject to reg 15, which is concerned with stale qualifications (see PARA 1070), a student to whom a Certificate of Completion has been issued prior to 1 October 1998 is not required to apply for a Certificate of Academic Standing: reg 14(c).

4 As to qualifying law degrees see PARA 1067.

5 Consolidated Regulations (2007) reg 14(a)(i).

6 Ie students whose educational qualifications are within the Consolidated Regulations (2007) Sch 2 para (c), that is to say, who hold a degree (other than an honorary degree) in any subject or subjects passed at a standard which the Bar Standards Board considers satisfactory and conferred by a university outside the United Kingdom and the Republic of Ireland: see PARA 1064. As to the meaning of 'United Kingdom' see PARA 1063 note 13.

7 Consolidated Regulations (2007) reg 14(a)(ii). As to completion of the academic stage by passing the Common Professional Examination see PARA 1068.

8 Ie students who have been accepted as mature students in accordance with the Consolidated Regulations (2007) Sch 2 para (d) (see PARA 1064).

9 Consolidated Regulations (2007) reg 14(a)(ii).

10 Consolidated Regulations (2007) reg 14(a). There is a fee: see reg 19(iii), Sch 10 para 1.

11 Consolidated Regulations (2007) reg 14(b).

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D. THE ACADEMIC AND VOCATIONAL STAGES COMBINED

1072. Exempting law degrees and integrated courses.

Students¹ may complete both the academic and vocational stages of training² by attending and being certified as completing degrees or courses which are recognised by the Bar Standards Board³ as satisfying both the academic and the vocational stages⁴. These are known as 'exempting law degrees' and 'integrated courses'⁵. Students who hold degrees (other than honorary degrees) passed at a standard which the Bar Standards Board considers satisfactory in any subject or subjects⁶ and mature students⁷ are eligible to undertake integrated courses⁸.

1 As to the meaning of 'student' see PARA 1063 note 4. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Both the academic and vocational stages of training must be completed before a student can be called to the Bar, and a student cannot generally enter the vocational stage until he has completed the academic stage: see the Consolidated Regulations (2007) reg 11(b), (c); and PARAS 1067-1068. As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078.

3 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

4 Consolidated Regulations (2007) reg 18, Sch 1.

5 Consolidated Regulations (2007) reg 18, Sch 1.

6 Ie students whose educational qualifications are within the Consolidated Regulations (2007) Sch 2 para (a) or (c) (see PARA 1064).

7 Ie students whose educational qualifications are within the Consolidated Regulations (2007) Sch 2 para (d) (see PARA 1064).

8 Consolidated Regulations (2007) Sch 1.

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(iii) Student Discipline

1073. Conduct and discipline.

A student¹ must observe such regulations as may be made by his Inn² concerning the conduct and discipline of its students³, and any student who commits a breach of such regulations is liable, at the Inn's discretion⁴:

- 1588 (1) to be expelled from the Inn⁵;
- 1589 (2) to have his call to the Bar postponed⁶; or
- 1590 (3) to be admonished as to his future conduct⁷.

These punishments may also be imposed on any student who:

- 1591 (a) makes a false statement in his admission declaration⁸ or in any form relating to admission fees⁹;
- 1592 (b) fails to carry out any order¹⁰ of the Masters of the Bench¹¹; or
- 1593 (c) does anything which demonstrates his unfitness for call or which is likely to bring his Inn or the profession into disrepute¹².

A student, not being a barrister, is not subject to the Code of Conduct of the Bar¹³; however, if a student after being called to the Bar is found to have engaged before call in conduct which is discreditable to a barrister and which was not fairly disclosed to the Inn calling him, that will constitute professional misconduct¹⁴.

1 As to the meaning of 'student' see PARA 1063 note 4. Note that, by virtue of that definition, whether these provisions apply to a person undertaking a period of pupillage will depend on whether or not he has been called to the Bar. For these purposes, references to a 'student' are references to a student so long as he remains a student: Consolidated Regulations (2007) reg 7(d).

The provisions of the Consolidated Regulations concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'Inn' see PARA 1063 note 4.

3 Consolidated Regulations (2007) reg 7(a).

4 Consolidated Regulations (2007) reg 7(c). The punishment imposed by the Inn will depend upon its view of the gravity of the student's offence: reg 7(c).

5 Consolidated Regulations (2007) reg 7(c)(ii), (1).

6 Consolidated Regulations (2007) reg 7(c)(ii), (2). As to call to the Bar generally see PARAS 1075-1078. Postponement is for a period specified by the Inn: reg 7(c)(2).

7 Consolidated Regulations (2007) reg 7(c)(ii), (3). Admonishment is imposed by the Treasurer of the Inn or such other person as may be appointed for the purpose: reg 7(c)(3). As to the Treasurers of the Inns see PARA 1055 note 3.

- 8 As to the admission declaration see PARA 1063.
- 9 Consolidated Regulations (2007) reg 7(c)(i). See also PARA 1063.
- 10 In any order under the Consolidated Regulations (2007).
- 11 Consolidated Regulations (2007) reg 7(c)(iii). As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.
- 12 Consolidated Regulations (2007) reg 7(c)(iv). It is for the Masters to decide whether an act or omission demonstrates unfitness for call or is likely to bring an Inn or the profession into disrepute: reg 7(c)(iv).
- 13 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 105; and PARA 1150.
- 14 See Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 902; and PARA 1247.

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1074. Notification of serious change in circumstances.

Any student¹ who:

- 1594 (1) has a bankruptcy order² or directors disqualification order³ made against him or who enters into an individual voluntary arrangement with his creditors⁴;
- 1595 (2) is convicted of a relevant criminal offence⁵;
- 1596 (3) is prohibited or suspended from practising any profession⁶; or
- 1597 (4) engages for a period exceeding three months⁷ in any occupation other than an occupation stated in his admission declaration⁸ or an occupation already notified⁹,

must give notice in writing of the fact to the Masters of the Bench¹⁰ through the Under-Treasurer¹¹, and must abide by and carry out any order of the Masters of the Bench arising out of that notification¹².

1 As to the meaning of 'student' see PARAS 1063 note 4, 1073 note 1. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.

3 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.

4 Consolidated Regulations (2007) reg 7(b)(i). As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.

5 Consolidated Regulations (2007) reg 7(b)(ii). As to the meaning of 'relevant criminal offence' see PARA 1063 note 13.

6 Consolidated Regulations (2007) reg 7(b)(iii).

7 'Month' means a calendar month: Consolidated Regulations (2007) Sch 1.

8 As to the admission declaration see PARA 1063.

9 Consolidated Regulations (2007) reg 7(b)(iv).

10 As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

11 As to the meaning of 'Under-Treasurer' see PARA 1075 note 9.

12 Consolidated Regulations (2007) reg 7(b).

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(iv) Call to the Bar

1075. Requirements for call.

A student¹ is eligible for call to the Bar² if:

- 1598 (1) he is aged 21 or over³;
- 1599 (2) he has satisfied the requirements⁴ relating to the keeping of terms⁵;
- 1600 (3) he has satisfied the requirements relating to the passing of the examination for call to the Bar or the completion of the vocational course⁶;
- 1601 (4) he has duly completed and signed a call declaration⁷ and paid the fees payable on call⁸; and
- 1602 (5) his name and description have been screened⁹ in the hall, benchers' rooms¹⁰ and Treasurer's office¹¹ of his Inn for four days in the term in which call is to take place¹².

1 As to the meaning of 'student' see PARA 1063 note 4. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the Bar as a profession see PARA 1034.

3 Consolidated Regulations (2007) reg 22(a).

4 Ie the requirements of the Consolidated Regulations (2007).

5 Consolidated Regulations (2007) reg 22(b). As to the keeping of terms see PARA 1076. Certain otherwise qualified persons may alternatively be required to satisfy the conditions of eligibility set out in Pt IV (see PARA 1078): reg 22(b).

6 Consolidated Regulations (2007) reg 22(b). As to the academic stage of training see PARAS 1067-1068. As to the vocational stage see PARAS 1069-1072. Certain otherwise qualified persons may alternatively be required to satisfy the conditions of eligibility set out in Pt IV (see PARA 1078): reg 22(b).

7 'Call declaration' means the declaration and undertaking referred to in the Consolidated Regulations (2007) reg 24 (see PARA 1077): Sch 1.

8 Consolidated Regulations (2007) reg 22(c).

9 The name and description of every student who is to be screened for call must be sent by the Under-Treasurer to each of the other Inns for similar screening: Consolidated Regulations (2007) reg 23. 'Under-Treasurer' means the Under-Treasurer or Sub-Treasurer of the Inn to which the applicant seeks admission or of which the student or barrister concerned is a member: Sch 1. As to the meaning of 'Inn' see PARA 1063 note 4. As to the meaning of 'applicant' see PARA 1060 note 13.

10 As to the benchers see PARAS 1051-1052.

11 As to the Treasurers of the Inns see PARA 1055.

12 Consolidated Regulations (2007) reg 22(d).

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1076. Keeping terms.

Before being called to the Bar¹ a student² must keep terms³; that is, he must attend a specified number of educational or collegiate events organised by or on behalf of his Inn ('qualifying sessions')⁴. The number of qualifying sessions which must be kept is ordinarily 12⁵, and they must be kept during a period not exceeding two years⁶. The Inns are required to offer sufficient events to enable its students to satisfy these requirements⁷. Students attending qualifying sessions may be credited with such numbers of sessions as the Inn, acting in comity with the other Inns, may consider appropriate⁸, although there is a limit on the number of sessions which a student may attend in any one term⁹. In certain circumstances, a student may attend sessions after call or be credited for sessions in absentia¹⁰.

1 As to the requirements for call to the Bar see PARA 1075. As to the Bar as a profession see PARA 1034. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'student' see PARA 1063 note 4.

3 The terms are: Michaelmas (1 October to 21 December); Hilary (11 January to the Wednesday before Easter Sunday); Easter (the second Tuesday after Easter Sunday to the last Friday in May); and Trinity (the second Tuesday after the end of the Easter Term to 31 July): Consolidated Regulations (2007) reg 8(a).

4 Consolidated Regulations (2007) reg 9(a). Qualifying sessions may include a residential educational and collegiate activity at Cumberland Lodge, West Dean or elsewhere arranged by or on behalf of an Inn, or a non-residential educational and collegiate activity of similar scope arranged by or on behalf of an Inn: reg 9(f). As to the meaning of 'Inn' see PARA 1063 note 4. A student is not treated as having attended a qualifying session unless he is present at the formal commencement and remains until the formal conclusion, provided that the Treasurer or acting Treasurer of an Inn may during any qualifying session on any day relax this requirement for any student in respect of that session: reg 9(e). As to the Treasurers of the Inns see PARA 1055. In exceptional circumstances, the Qualifications Committee may relax or dispense with any of the requirements relating to the keeping of terms: see reg 10(b). As to the meaning of 'Qualifications Committee' see PARA 1060 note 12.

5 Consolidated Regulations (2007) reg 9(a).

6 Consolidated Regulations (2007) reg 9(d). The Masters of the Bench may consent to the variation of this requirement: reg 9(d). As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

7 Consolidated Regulations (2007) reg 8(b). Each Inn is responsible, in comity with the other Inns, for arranging suitable numbers of qualifying sessions to be available for the students who are members of the Inn, and for ensuring that all the activities arranged by or on behalf of the Inn are educational and collegiate activities for these purposes (reg 9(h)), and it is the responsibility of individual Inns to promulgate to their students the dates in each of the four terms on which qualifying sessions will take place (reg 8(c)).

8 Consolidated Regulations (2007) reg 9(g).

9 A student who attends more than six qualifying sessions in any term will be credited with having attended only six qualifying sessions in that term unless, upon a petition in writing showing proper grounds, the Masters of the Bench determine that he is to be credited with having attended a greater number of qualifying sessions (not exceeding nine or the number actually attended, whichever is the less): Consolidated Regulations (2007) reg 9(c). A student who kept any term before 1 September 1997 is deemed to have attended three qualifying sessions in each term so kept (reg 9(b)), and term dinners taken before 31 May 1998 are deemed to be qualifying sessions (reg 9(i)).

10 See the Consolidated Regulations (2007) reg 10(a), which provides that, on petition showing substantial grounds, the Masters of the Bench may permit any student: (1) to attend not more than two qualifying sessions after call (provided always that such qualifying sessions are attended within 12 months of the date of call, and a written undertaking to attend such qualifying sessions is given to the Masters by the student on or before call); and (2) to have credit for not more than two qualifying sessions in absentia. The total number of qualifying sessions permitted under these provisions may not exceed two: reg 10(a).

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1077. Call days and procedure.

Calls to the Bar¹ generally take place on the second Thursday in March (Hilary Term), the fourth Thursday in July (Trinity Term) and the fourth Thursday in November (Michaelmas Term)². Students³ are required to attend their call ceremony in person⁴, and provision is made as to the order of seniority in which they will be called⁵. Before being called to the Bar, every student must duly complete and sign his call declaration⁶, by which he declares and undertakes:

- 1603 (1) that the declaration he made for the purpose of obtaining admission as a student member of his Inn⁷ was and remains true and accurate in every respect⁸; and
1604 (2) that so long as he remains a barrister he will observe the Code of Conduct⁹;

and must declare whether, while he has been a student:

- 1605 (a) he has engaged for a period exceeding three months in any occupation not stated in his admission declaration or notified to the Inn¹⁰;
1606 (b) he has been convicted of any relevant criminal offence¹¹ in any part of the world, or has criminal proceedings pending against him in respect of any relevant offence¹²;
1607 (c) he has had a bankruptcy order¹³ made against him in any part of the world¹⁴;
1608 (d) he has been made the subject of an order, or has given an undertaking or promise, restricting him from instituting any form of legal proceedings¹⁵; or
1609 (e) he knows of any other matter which might reasonably be expected to affect the mind of a bencher¹⁶ considering his application¹⁷.

The making of a declaration which is false in any material respect, or any breach of any undertaking embodied in the declaration, constitutes professional misconduct¹⁸. The declarant must declare that he understands this¹⁹.

1 As to the requirements for call to the Bar see PARA 1075. As to the Bar as a profession see PARA 1034. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Consolidated Regulations (2007) reg 21(a). As to the terms see PARA 1076 note 3. A deferred Trinity call for intending practitioners takes place on the second Thursday in October in each year (reg 21(b)), and other call days may be authorised from time to time by the Inns' Council (reg 21(c)). As to the Inns' Council see PARAS 1053-1057.

3 As to the meaning of 'student' see PARA 1063 note 4.

4 Consolidated Regulations (2007) reg 21(d). However, the Masters of the Bench may, on petition showing proper grounds, permit a student to be called in absentia if they consider it appropriate in all the circumstances: reg 21(e). As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

- 5 See the Consolidated Regulations (2007) reg 25.
- 6 Consolidated Regulations (2007) reg 24(a). The Masters of the Bench may modify the terms of the call declaration to meet particular circumstances: reg 24(b).
- 7 In his admission declaration: see the Consolidated Regulations (2007) reg 5, Sch 4; and PARA 1063. As to the meaning of 'Inn' see PARA 1063 note 4.
- 8 Consolidated Regulations (2007) reg 24(b)(iii), Sch 5 para 1.
- 9 Consolidated Regulations (2007) Sch 5 para 3. See also the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 105; and PARA 1150. If the declarant has not completed his term-keeping obligations at the time of call and is permitted to keep the outstanding terms after call (see PARA 1076 note 10), he must also declare that if called to the Bar he will keep the outstanding number of terms immediately following his call, unless otherwise authorised: Consolidated Regulations (2007) Sch 5 para 4, note 7.
- 10 Consolidated Regulations (2007) Sch 5 para 2(a). The declarant is entitled to practise as a solicitor after his call but if he intends to, or might, do so, he must declare the fact: Sch 5 note 2.
- 11 As to the meaning of 'relevant criminal offence' see PARA 1063 note 13.
- 12 Consolidated Regulations (2007) Sch 5 para 2(b).
- 13 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.
- 14 Consolidated Regulations (2007) Sch 5 para 2(c).
- 15 Consolidated Regulations (2007) Sch 5 para 2(d). This undertaking requires the disclosure of, for example, an order under the Supreme Court Act 1981 s 42 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 258. As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed), any civil or other injunction restricting the declarant's conduct in any matter, or the imposition of a *Grepe v Loam* order (ie an order restraining a litigant from making applications without the court's permission: see *Grepe v Loam* (1887) 37 ChD 168; and **CIVIL PROCEDURE** vol 11 (2009) PARA 15); but this list is not exhaustive: Consolidated Regulations (2007) Sch 5 note 5.
- 16 As to the benchers see PARAS 1051-1052.
- 17 Consolidated Regulations (2007) Sch 5 para 2(e). The declarant must include any incident of behaviour, which if known by a bencher might cause him to consider the application more carefully; by way of illustration, such incidents or behaviour might include the receipt of a police caution, a breach of the rules of any professional body leading to a restriction of the right to practise or membership, or disqualification as a company director: Sch 5 note 6. As to disqualification as a company director see **COMPANIES** vol 15 (2009) PARA 1575 et seq.
- 18 Consolidated Regulations (2007) reg 24(c); Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 902. As to what constitutes professional misconduct see PARA 1247.
- 19 Consolidated Regulations (2007) Sch 5 para 6.

UPDATE

1077 Call days and procedure

NOTE 15--Appointed day is 1 October 2009: SI 2009/1604.

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1078. Special provision for solicitors, other qualified lawyers and academics, and temporary admission.

Solicitors¹, Northern Ireland barristers, Scottish advocates and certain qualified legal practitioners from other common law jurisdictions are eligible for admission to permanent membership of an Inn² and call to the Bar³ without gaining the qualifications required of, or satisfying the other requirements imposed on, the generality of students⁴. In addition, certain European lawyers⁵ are eligible to be called to the Bar, and to practise, on the strength of their existing qualifications⁶. A lawyer seeking to exercise this right must satisfy the requirements specified for his particular situation⁷, and is not prevented by his entitlement from seeking admission and call via the normal route⁸. Certain distinguished academics may also be called⁹, and qualified lawyers may be temporarily called to the Bar for the purpose of conducting a particular case or cases¹⁰.

1 As to the meaning of 'solicitor' see PARA 1063 note 14.

2 As to the meaning of 'Inn' see PARA 1063 note 4.

3 As to the requirements for call to the Bar generally see PARAS 1075-1077. As to the Bar as a profession see PARA 1034.

4 See the Consolidated Regulations (2007) regs 26, 27, 35, 36; and PARAS 1098-1101. As to the qualifications required of, and the other requirements imposed on, the generality of students see PARA 1063 et seq.

5 As to the meaning of 'European lawyer' see PARA 535.

6 See the Consolidated Regulations (2007) regs 26-34; and PARAS 1102-1107. This process also may involve registration as a European lawyer (see PARAS 1102-1103), although registered European lawyers do not have to have been called to the Bar in order to practise in England and Wales (see PARAS 1106-1107). As to the meaning of 'registered European lawyer' see PARA 1102 note 7.

7 I.e. specified in the Consolidated Regulations (2007).

8 Consolidated Regulations (2007) reg 26(b).

9 See the Consolidated Regulations (2007) reg 55; and PARA 1108.

10 See the Consolidated Regulations (2007) regs 26, 37-39; and PARA 1165.

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1079. Readmission of disbarred barristers.

A former barrister who has been disbarred may apply to the Masters of the Bench¹ for readmission to the Bar². If the Masters decide to entertain the application they must cause notice thereof³ to be screened in the hall, benchers' rooms⁴, and Treasurer's office⁵ of the Inn for not less than eight days, and must cause a copy of the notice so screened to be sent to each of the other Inns for screening⁶, and at any time within three months after such screening may admit the applicant⁷. Before being readmitted to the Bar, a former barrister must duly complete and sign his call declaration⁸, by which he declares and undertakes that so long as he remains a barrister he will observe the Code of Conduct⁹, and declares whether:

- 1610 (1) he has engaged during the 12 months immediately before the date of declaration in any occupation which he has not disclosed to the Under-Treasurer¹⁰;
- 1611 (2) he has been convicted of any relevant criminal offence¹¹ in any part of the world, or has criminal proceedings pending against him in respect of any relevant offence¹²;
- 1612 (3) he has had a bankruptcy order¹³ or directors disqualification order¹⁴ made against him in any part of the world¹⁵;
- 1613 (4) he has entered into any individual voluntary arrangement with his creditors¹⁶;
- 1614 (5) he has been prohibited or suspended from practising as a member of any professional body in any part of the world¹⁷; and
- 1615 (6) he has provided and authenticated such further information about himself as may reasonably be regarded as relevant to be considered by the Masters in connection with his proposed readmission¹⁸.

The making of a declaration which is false in any material respect, or any breach of any undertaking embodied in the declaration, constitutes professional misconduct¹⁹. The declarant must declare that he understands this²⁰.

1 As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

2 Consolidated Regulations (2007) regs 56(a), 57(a). A fee is payable for processing the application: see regs 56(a), 57(a), Sch 10 para 11. As to the Bar as a profession see PARA 1034. As to the Consolidated Regulations see PARA 1060.

These provisions apply both to barristers who have been disbarred at their own request and to those who have been disbarred for a disciplinary offence: regs 56(a), 57(a). As to disbarment for a disciplinary offence see PARAS 1278-1279. As to the powers of the benchers in this regard see PARA 1051. An application from a barrister who has been disbarred for a disciplinary offence must be accompanied by a statement signed by the applicant setting out all relevant matters affecting him since disbarment, including his record of employment and any relevant medical certificate, and must be supported in writing by: (1) at least one practising or employed barrister of not less than ten years' standing or a Master of the Bench; (2) the applicant's employer or last employer if applicable; and (3) two other references as to general character (in the form adapted from certificate A in Sch 3): reg 57(b). As to employed barristers see PARA 1037.

3 The notice of application must contain the name and description of the applicant and the dates of his original call and disbarment and any information deemed relevant by the Inn: Consolidated Regulations (2007) regs 56(c), 57(f). As to the meaning of 'Inn' see PARA 1063 note 4.

4 As to the benchers see PARAS 1051-1052.

- 5 As to the Treasurers of the Inns see PARA 1055.
- 6 Consolidated Regulations (2007) regs 56(b), 57(f). An application from a former barrister who has been disbarred for a disciplinary offence must be referred to the Complaints Committee of the Bar Standards Board together with relevant documents relating to the original complaint and any other matters concerning the applicant: see reg 57(c). The Complaints Committee must consider the matter in accordance with the provisions of the Code of Conduct and must in writing inform the Masters of its recommendation or of the fact that it makes no recommendation: Consolidated Regulations (2007) reg 57(d). Upon receipt of the views of the Complaints Committee, the Masters must decide whether or not to entertain the application; and, if they decide so to do, they may impose such conditions on the applicant as to further training, assessment or pupillage as they think fit: reg 57(e). As to the Complaints Committee see PARA 1251. As to the Code of Conduct see PARA 1150.
- 7 Consolidated Regulations (2007) regs 56(d), 57(f). Readmission is subject to the payment of a further admission fee (see regs 56(d), 57(f), Sch 10 para 11) and in the case of a former barrister who has been disbarred for a disciplinary offence, is subject to the satisfaction of any further conditions imposed under reg 57(e) (see note 6): reg 57(f).
- 8 Consolidated Regulations (2007) regs 24(a), (b)(ii), 56(d), 57(f). The Masters of the Bench may modify the terms of the call declaration to meet particular circumstances: reg 24(b).
- 9 Consolidated Regulations (2007) Sch 7 para 5. See also the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 105; and PARA 1150.
- 10 Consolidated Regulations (2007) Sch 7 para 1. As to the Under-Treasurer see PARA 1075 note 9.
- 11 As to the meaning of 'relevant criminal offence' see PARA 1063 note 13.
- 12 Consolidated Regulations (2007) Sch 7 para 2(a).
- 13 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.
- 14 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.
- 15 Consolidated Regulations (2007) Sch 7 para 2(b).
- 16 Consolidated Regulations (2007) Sch 7 para 2(c). As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.
- 17 Consolidated Regulations (2007) Sch 7 para 3.
- 18 Consolidated Regulations (2007) Sch 7 para 4.
- 19 Consolidated Regulations (2007) reg 24(c); Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 902. As to what constitutes professional misconduct see PARA 1247.
- 20 Consolidated Regulations (2007) Sch 7 para 6.

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(v) Pupillage

A. INTRODUCTION

1080. Obligation to undertake pupillage.

A person who intends to practise at the Bar¹ of England and Wales must train as a pupil² for an aggregate period of not less than 12 months³, of which six months are non-practising⁴ and six months are spent in practice⁵. He may also be required to complete such further training after completion of the vocational stage of training⁶ as the Bar Standards Board⁷ may require⁸. In general, a person may not practise as a barrister unless he has complied with these requirements⁹, although the requirements may be waived, in whole or part, in respect of certain qualified persons¹⁰. Pupillage is undertaken under the supervision of a pupil supervisor¹¹, who must take all reasonable steps to provide his pupil with adequate tuition, supervision and experience¹².

1 As to the Bar as a profession see PARA 1034.

2 As to the requirements for a pupillage see PARA 1081.

3 Consolidated Regulations (2007) reg 41.1(i). As to the Consolidated Regulations see PARA 1060.

4 Consolidated Regulations (2007) reg 41.2(i). As to the non-practising period see PARA 1089.

5 Consolidated Regulations (2007) reg 41.2(ii). As to the practising period see PARA 1090.

6 As to the vocational stage of training see PARAS 1069-1071.

7 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

8 Consolidated Regulations (2007) reg 41.1(ii).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(a). As to the Code of Conduct see PARA 1150.

10 Ie solicitors, Northern Ireland barristers, Scottish advocates, qualified legal practitioners from other common law jurisdictions, certain European lawyers and, in exceptional circumstances, distinguished academics: see PARAS 1078, 1098-1108.

11 As to pupil supervisors see PARAS 1082-1087.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 804(b).

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1081. Requirements of a pupillage.

Pupillage must be undertaken with a registered approved pupil supervisor¹ and in a pupillage training organisation² authorised by the Bar Standards Board³. The Board has the power to invalidate (in whole or in part) any pupillage where the failures or deficiencies in that pupillage are such that the value of any pupillage training has or is likely to have been seriously compromised⁴.

¹ As to pupil supervisors see PARAS 1082-1087.

² The Bar Standards Board may authorise, or refuse to authorise, any chambers, organisation, firm, company or other body as a pupillage training organisation, subject to such terms as the Board may from time to time determine: Consolidated Regulations (2007) reg 47(2)(i), (ii). It may withdraw such authorisation at any time: reg 47(2)(iii).

Where the Bar Standards Board refuses or withdraws authorisation (or invalidates a pupillages under reg 47.3 (see text and note 4)) it must give notice of its decision in writing to all parties affected by that decision (reg 47.4(i)). A party affected by such a decision may apply for a review, provided that such application is made to the Bar Standards Board in writing within one month of receipt of notification in writing of the decision (reg 47.4(ii)). Where either there is no application for a review of that decision or following such a review the decision is confirmed, the chambers, organisation, firm, company or other body will not be entitled to claim any refund or reimbursement of any payment made to any pupil or prospective pupil as the case may be in respect of any pupillage award, pupillage funding, travelling or other payments or expenses (reg 47.4(iv)). For these purposes the following are parties affected by such a decision: (1) the chambers, organisation, firm, company or other body in respect of which authorisation has been refused or withdrawn (reg 47.4(iii)(a)); (2) any person whose pupillage or (where an offer of pupillage has been accepted but the pupillage has not yet commenced) prospective pupillage is or may be affected by a decision to refuse or withdraw authorisation, or to invalidate a pupillage or any part thereof, and the chambers, organisation, firm, company or other body where such a person has undertaken pupillage or from whom an offer of pupillage has been accepted but the pupillage has not yet commenced (reg 47.4(iii)(b)).

As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

³ Consolidated Regulations (2007) reg 47.1.

⁴ Consolidated Regulations (2007) reg 47.3. This power may be exercised irrespective of whether the Bar Standards Board has exercised its power to refuse or withdraw authorisation under reg 47.2 (see note 2) (reg 47.3). As to procedure with regard to, and review of, a decision to invalidate a pupillage see note 2.

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B. PUPIL SUPERVISORS

1082. Eligibility for registration as an approved pupil supervisor.

In order to be entered on the register of approved pupil supervisors kept by the Bar Council¹, a barrister must be approved as a pupil supervisor by his Inn². Each Inn must, from time to time, provide the Bar Standards Board³ with a list of approved pupil supervisors⁴.

A practising barrister⁵ may apply to his Inn to be approved as a pupil supervisor. An applicant⁶ must at the date of his application:

- 1616 (1) have practised in the United Kingdom or another member state⁷ as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body for a period (which need not have been continuous and need not have been as a member of the same authorised body) of at least six years in the previous eight years⁸; and
- 1617 (2) have made his practice his primary occupation and been entitled to exercise a right of audience⁹ as a barrister during the two years immediately preceding the date of the application¹⁰.

No Queen's Counsel¹¹ other than an employed barrister¹² may be registered as a pupil supervisor¹³.

1 As to the meaning of 'Bar Council' see PARA 1042 note 1.

2 Consolidated Regulations (2007) reg 48.1. As to the Consolidated Regulations see PARA 1060. As to the meaning of 'Inn' see PARA 1063 note 4.

3 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

4 Consolidated Regulations (2007) reg 48.2.

5 As to practising as a barrister see PARA 1152 et seq.

6 As to the meaning of 'applicant' see PARA 1060 note 13.

7 As to the meaning of 'member state' see PARA 1069 note 4.

8 Consolidated Regulations (2007) reg 48.3(i). The Masters of the Bench may approve a person as a pupil supervisor even though that person does not satisfy this condition (or the condition in reg 48.3(ii) (see text and note 10) provided they are satisfied that he has the necessary experience to be so approved: reg 48.4. As the meaning of 'Masters of the Bench' see PARA 1060 note 13.

9 As to rights of audience generally see PARAS 1109 et seq.

10 Consolidated Regulations (2007) reg 48.3(ii). See also note 8.

11 As to Queen's Counsel see PARA 1124.

12 As to employed barristers see PARA 1037.

13 Consolidated Regulations (2007) reg 48.5.

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1083. Application for registration as an approved pupil supervisor.

An eligible barrister¹ who wishes to act as a pupil supervisor must submit to the Masters of the Bench an appropriately supported² application³. If the Masters approve the application⁴, they must notify the applicant⁵ and the Bar Council⁶, which must cause the applicant to be entered on the register of approved pupil supervisors accordingly⁷. If the Masters of the Bench refuse the application they must notify the applicant accordingly⁸.

1 As to eligibility see PARA 1082.

2 The application must be supported in the following respects:

541 (1) in the case of a barrister in independent practice, by the applicant's Head of Chambers, and in the case of an employed barrister by a more senior lawyer employed in the same organisation and having direct knowledge of the work of the applicant (Consolidated Regulations (2007) reg 49(ii)(a)); or

542 (2) if the applicant is himself the Head of Chambers, or there is no more senior lawyer employed in the same organisation with such direct knowledge, or for any other reason the support referred to in (1) above is not available, by an independent person who is a Master of the Bench of an Inn, a Queen's Counsel, a Leader of a Circuit, a Recorder or Deputy High Court Judge, Treasury Counsel or a person of comparable standing who is able to comment from personal knowledge on the applicant's suitability to act as a pupil supervisor (reg 49(ii)(b)); and

543 (3) in every case, by a second person falling within the requirements in (2) above (reg 49(ii)(c)).

As to employed barristers see PARA 1037. As to the meaning of 'Master of the Bench' see PARA 1060 note 13. As to Queen's Counsel see PARA 1124. As to the circuits see PARA 1058.

3 Consolidated Regulations (2007) reg 49(i). As to the form of the application see Sch 8: reg 49(i).

4 Any approval may be provisional and subject to such terms as the Masters of the Bench may at any time in their discretion impose to ensure that the pupil supervisor is qualified and able to discharge his responsibilities: Consolidated Regulations (2007) reg 49(iv).

5 As to the meaning of 'applicant' see PARA 1060 note 13.

6 As to the meaning of 'Bar Council' see PARA 1042 note 1.

7 Consolidated Regulations (2007) reg 49(iii).

8 Consolidated Regulations (2007) reg 49(v). An appeal lies to the Qualifications Committee from such a refusal: see regs 49(vi), 51. As to the meaning of 'Qualifications Committee' see PARA 1060 note 12.

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1084. Training of pupil supervisors.

The Bar Standards Board¹, in consultation with the Inns' Council², must prescribe what training, if any, is to be undertaken by persons either before or after they have been entered on the register of approved pupil supervisors³. A pupil supervisor who fails to undertake any such training within the prescribed time⁴ will not be registered or (if already registered) will have his name removed from the register of approved pupil supervisors held by the Bar Council⁵.

1 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

2 As to the meaning of 'Inns' Council' see PARA 1053 note 1.

3 Consolidated Regulations (2007) reg 48.6. As to the Consolidated Regulations see PARA 1060. As to entry on the register of pupil supervisors see PARA 1083. As to eligibility to act as a pupil supervisor see PARA 1082.

4 I.e. prescribed by the Masters of the Bench: see Consolidated Regulations (2007) reg 48.7. As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

5 Consolidated Regulations (2007) reg 48.7. A person not registered, or removed from the register, under this provision may appeal: see regs 48.8, 51. As to the meaning of 'Bar Council' see PARA 1042 note 1.

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1085. Duties of pupil supervisors.

A pupil supervisor¹ must take all reasonable steps to provide his pupil with adequate tuition, supervision and experience², and must at all times comply with the regulations relating to pupillage³. He must also have regard to the pupillage guidelines issued from time to time by the Bar Standards Board⁴, and to the Equality and Diversity Code for the Bar⁵. A pupil supervisor may not be responsible for more than one pupil at a time save with the approval in writing of the Bar Standards Board⁶.

1 As to eligibility to act as a pupil supervisor, authorisation, registration and training see PARAS 1082-1084.

2 Consolidated Regulations (2007) reg 54; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 804(b). As to the Consolidated Regulations see PARA 1060. As to the Code of Conduct see PARA 1150. A registered European lawyer undertaking professional work in England and Wales is exempt from the requirements of the Code of Conduct relating to pupil supervisors: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B (Registered European Lawyers Rules) r 6; and PARA 1166. As to the meaning of 'registered European lawyer' see PARA 1102 note 7.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 804(a). The regulations relating to pupillage are the Consolidated Regulations (2007) Pt V (regs 41-54).

4 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 804(c); and the Bar Standards Board's Pupillage File (2008/2009) section 1.2.4.

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 804(c). As to the Equality and Diversity Code see PARA 1095.

6 Consolidated Regulations (2007) reg 47.5. As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

UPDATE

1085 Duties of pupil supervisors

NOTE 2--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B amended on 1 September 2009.

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1086. Complaints against pupil supervisors and removal from the register.

Any complaint or other matter which appears to affect the fitness of a barrister to continue as a pupil supervisor¹, or the desirability of his continued registration as such, must be referred to the Masters of the Bench². They will then investigate the complaint³, and may resolve that a barrister's registration as a pupil supervisor be suspended pending the outcome of their inquiries⁴.

If it is the opinion of the Masters of the Bench that the barrister's conduct is such as to render him unfit to continue as a pupil supervisor, they may resolve⁵ that the barrister be removed from the register or suspended from the register for such period as they may determine⁶. Alternatively, they may either dismiss the complaint⁷, take no action⁸, refer the case to the Complaints Committee of the Bar Standards Board⁹, or, if they are of the opinion that the case is such as to require informal treatment, draw it to the barrister's attention in writing and, if thought necessary, direct him to attend upon the Treasurer of his Inn or some other person nominated by the Treasurer¹⁰.

1 As to eligibility to act as a pupil supervisor, authorisation, registration, training and duties see PARAS 1082-1085.

2 Consolidated Regulations (2007) reg 50.1. As to the Consolidated Regulations see PARA 1060. As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

3 Consolidated Regulations (2007) reg 50.1. If they deem it necessary or desirable, the Masters of the Bench may invite the barrister concerned to comment on the complaint, either in writing or in person: reg 50.1.

4 Consolidated Regulations (2007) reg 50.2. If such a resolution is passed, the Masters of the Bench must notify the barrister accordingly: regs 50.2, 50.5. A pupil supervisor suspended under this provision may appeal: see regs 50.6, 51.

5 If such a resolution is passed, the Masters of the Bench must notify the pupil supervisor accordingly: Consolidated Regulations (2007) reg 50.5. A pupil supervisor removed or suspended under this provision may appeal: see regs 50.6, 51.

6 Consolidated Regulations (2007) reg 50.3(v). In the version of the Consolidated Regulations published by the Inns and the Bar Council, there are two provisions numbered 50.3(ii). However, as the second reg 50.3(ii) follows reg 50.3(iv), these provisions have accordingly been cited in this paragraph as it seems that they were intended to be numbered and not as they appear in the published version.

If a resolution to remove or suspend a pupil supervisor is passed, the Masters of the Bench must notify the pupil supervisor accordingly: reg 50.5. A pupil supervisor removed or suspended under this provision may appeal: see regs 50.6, 51.

7 Consolidated Regulations (2007) reg 50.3(i).

8 Consolidated Regulations (2007) reg 50.3(ii).

9 Consolidated Regulations (2007) reg 50.3(iii). As to the Complaints Committee see PARA 1251.

10 Consolidated Regulations (2007) reg 50.3(iv). As to the Treasurers of the Inns see PARA 1055 note 3.

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1087. Removal from the register on other grounds.

A barrister's name will be removed from the register of pupil supervisors¹ if:

- 1618 (1) he requests the Bar Council² to remove his name³;
- 1619 (2) not being an employed barrister⁴, he is appointed as Queen's Counsel⁵;
- 1620 (3) he ceases to practise as a barrister or is suspended from practice as a barrister⁶; or
- 1621 (4) the Masters of the Bench⁷ resolve to remove his name from the register because he has not taken a pupil for five years⁸.

1 As to eligibility to act as a pupil supervisor, authorisation, registration, training and duties see PARAS 1082-1085. A pupil supervisor whose name is removed from the register may appeal: see the Consolidated Regulations (2007) regs 50.6, 51. As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'Bar Council' see PARA 1042 note 1.

3 Consolidated Regulations (2007) reg 50.4(a).

4 As to employed barristers see PARA 1037.

5 Consolidated Regulations (2007) reg 50.4(b). As to Queen's Counsel see PARA 1124.

6 Consolidated Regulations (2007) reg 50.4(c).

7 As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

8 Consolidated Regulations (2007) reg 50.4(d). If such a resolution is passed, the Masters must notify the pupil supervisor accordingly: reg 50.5.

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C. COMMENCEMENT, REGISTRATION AND UNDERTAKING OF PUPILLAGE

1088. Commencement and registration of pupillage.

A person who is required to train as a pupil¹ may not commence pupillage unless:

- 1622 (1) he has completed the vocational stage of training²;
- 1623 (2) he has been authorised to be called to the Bar³ in pursuance of any of the special provisions relating to qualified lawyers or academics⁴ and, if required so to do, has passed the aptitude test⁵ or a relevant part of it⁶; or
- 1624 (3) he has been authorised to be readmitted to the Bar⁷ and, if required so to do, has passed the aptitude test or a relevant part of it⁸.

In any event, a person may not commence pupillage after the expiration of a period of five years⁹ from the date when he was certified as having completed and passed a vocational course¹⁰, a vocational conversion course or any relevant part of the aptitude test, or as having successfully completed any further training which he was required by the Bar Standards Board to undertake before commencing pupillage¹¹.

A person may not commence a pupillage unless it has been registered with the Bar Standards Board¹². The Board may refuse to register a pupillage if the chambers with which the pupillage is proposed to be undertaken has not made proper arrangements for dealing with pupils and pupillage¹³. A pupil must also notify the Bar Standards Board of any material changes in the arrangements for his pupillage¹⁴.

1 Ie required by the Consolidated Regulations (2007) reg 41: see PARA 1080. The provisions of the Consolidated Regulations concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Consolidated Regulations (2007) reg 43(1). As to the vocational stage of training see PARAS 1069-1072. A person who has completed the vocational stage by passing the Bar Examination must also have successfully completed a vocational conversion course, or such other training as the Bar Standards Board may require, before commencing pupillage: reg 43(1). As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

3 As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078.

4 Ie the provisions of the Consolidated Regulations (2007) Pt IV or reg 55, under which solicitors, Northern Ireland barristers, Scottish advocates, qualified legal practitioners from common law jurisdictions outside England and Wales, certain European lawyers and, in exceptional circumstances, distinguished academics, may be called to the Bar without gaining the qualifications required of the generality of students: see PARAS 1078, 1098-1108.

5 Ie the test set out in the Consolidated Regulations (2007) Sch 13. As to the test see further reg 30(d).

6 Consolidated Regulations (2007) reg 43(2).

7 Ie in pursuance of the Consolidated Regulations (2007) reg 56 or reg 57 (see PARA 1079).

8 Consolidated Regulations (2007) reg 43(2).

9 Or such other period as the Bar Standards Board may stipulate: Consolidated Regulations (2007) reg 44.1. This period may be extended by the Bar Standards Board in an individual case for such period and on such terms as it thinks fit including the requirements as to further courses of study or training to be undertaken by the person seeking the extension: reg 44.2.

10 As to the meaning of 'vocational course' see PARA 1069.

11 Consolidated Regulations (2007) reg 44.1. A person who intends to practise as a barrister may be required to complete such further training after completion of the vocational stage as may be required from time to time by the Bar Standards Board: see reg 41.1(ii); and PARA 1080. These provisions do not apply to persons who registered for the vocational course or vocational conversion course or were required to take the aptitude test or any section or sections or part or parts of it before 1 September 1998: reg 44.3.

12 Consolidated Regulations (2007) reg 43(3). A pupil is required, on arranging his pupillage (which includes any period of external training under reg 46 (see PARA 1090)), to give notice in writing to the Bar Standards Board in the form specified in Sch 14 Pt 1 (application to be register a pupillage/external training placement): see reg 42.1.

13 Consolidated Regulations (2007) reg 42.2. In particular, chambers are required to take reasonable steps to ensure: (1) that all pupillage vacancies are advertised in the manner prescribed by the Bar Council (Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(c)(i)); (2) that such arrangements are made for the funding of pupils by chambers as the Bar Council may by resolution from time to time require (para 404.2(c)(ii)); and (3) that in making arrangements for pupillage, regard is had to the pupillage guidelines issued from time to time by the Bar Council and to the Equality and Diversity Code for the Bar (para 404.2(c)(iii)). As to the arrangements for the advertising of vacancies see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe R (Pupillage Funding and Advertising Requirements 2003) rr 4, 5. As to the arrangements for the funding of pupils see Annexe R (Pupillage Funding and Advertising Requirements 2003) rr 1-3, 5. As to the Code of Conduct, and Bar Council guidance see PARA 1150. As to the Equality and Diversity code for the Bar see PARA 1095. Where the Bar Standards Board refuses to register a pupillage, it must inform the pupil in writing of its decision giving the reasons on which the decision was based: Consolidated Regulations (2007) reg 42.3.

14 Consolidated Regulations (2007) reg 42.4. Notification must be in the form specified in Sch 14 Pt 2.

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1089. Pupil's non-practising six months.

The non-practising six months of pupillage¹ must be undertaken in a continuous period of six months in England and Wales², and must be spent with one or more pupil supervisors³. On completion of the non-practising six months, the pupil must obtain from his pupil supervisor a certificate for submission to the Bar Standards Board⁴ certifying that he has satisfactorily completed the period⁵. Provided that the pupil has also completed such further training as the Board may require⁶, it must register the certificate and, if the pupil has been called to the Bar⁷, issue him with a Provisional Qualification Certificate⁸.

1 As to the obligation to undertake pupillage, and the division of the period of pupillage into non-practising and practising parts, see PARA 1080. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Consolidated Regulations (2007) reg 41.2(i). This requirement may be varied in writing by the Qualifications Committee: reg 41.2(i). As to the meaning of 'Qualifications Committee' see PARA 1060 note 12.

3 Consolidated Regulations (2007) reg 46.1. As to pupil supervisors see PARAS 1082-1087. For the pupil's limited rights to supply legal services during the non-practising period see PARA 1093.

4 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

5 Consolidated Regulations (2007) reg 52.1. The Bar Standards Board may in certain circumstances accept a certificate from the pupil supervisor's head of chambers or another acceptable person (see reg 52.3), and the Qualifications Committee may, on the pupil's request, grant a certificate themselves on the grounds that the pupil supervisor's signature has been wrongly withheld (see reg 52.4). In either case, the Bar Standards Board must issue a Provisional Qualification Certificate forthwith: reg 52.5. A pupil who has made an application to the Qualifications Committee and who is dissatisfied may request in writing that the Committee review its decision: see regs 51, 52.6. There is a fee: Sch 10 para 11.

6 Ie such further training as is referred to in the Consolidated Regulations (2007) reg 41.1(ii): see PARA 1080.

7 As to the Bar as a profession see PARA 1034. As to call to the Bar generally see PARAS 1075-1078.

8 Consolidated Regulations (2007) reg 52.1.

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1090. Pupil's practising six months.

The practising six months of pupillage¹ may be undertaken in any member state². The whole of the practising six months must be undertaken after call³, and must be commenced after, but not later than 12 months after, the completion of the non-practising six months⁴. It must comprise either a continuous period of six months or a total period of six months completed within an overall period of nine⁵, except that⁶:

- 1625 (1) up to six months may be satisfied by an equivalent period of training spent with a solicitor⁷ who is practising in the United Kingdom or in another member state⁸;
- 1626 (2) up to six months may be satisfied by an equivalent period of training spent with a lawyer qualified and practising in another member state⁹;
- 1627 (3) six months may be satisfied by undertaking a stage of five months duration or more in the legal departments of the European Commission¹⁰, or a placement at the European Commission in London¹¹;
- 1628 (4) up to six weeks may be satisfied by serving as a marshal with a judge of the High Court of Justice or with a circuit judge¹²;
- 1629 (5) up to four weeks may be satisfied by working with a solicitor or other professional person whose work is relevant to his pupil supervisor's practice¹³; and
- 1630 (6) up to four weeks may be satisfied by working under supervision for a body which supplies legal services to the public without a fee or for a nominal fee¹⁴.

The Qualifications Committee may also, in an individual case, recognise such other form of training as satisfying part of pupillage as it considers appropriate having regard to the particular circumstances of the person concerned¹⁵. Subject to these exceptions, the practising six months must be spent with one or more pupil supervisors¹⁶.

On completion of the practising six months, the pupil must obtain from his pupil supervisor and from any person with whom he has undertaken external training a certificate for submission Bar Standards Board¹⁷ certifying that he has satisfactorily completed the period¹⁸. Provided that the pupil has also completed such further training as the Board may require¹⁹, it must register the certificate and issue the pupil with a Full Qualification Certificate²⁰.

1 As to the obligation to undertake pupillage, and the division of the period of pupillage into non-practising and practising parts, see PARA 1080 et seq. The provisions of the Consolidated Regulations (2007) concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Consolidated Regulations (2007) reg 41.2(ii)(5). As to the meaning of 'member state' see PARA 1069 note 4.

3 Consolidated Regulations (2007) reg 41.2(ii)(4). As to call to the Bar generally see PARAS 1075-1078.

4 Consolidated Regulations (2007) reg 41.2(ii)(2), (3). These requirement may be varied in writing by the Qualifications Committee: reg 41.2(ii)(2), (3). Variation may be subject to such conditions as to additional

training as the Qualifications Committee considers appropriate: reg 41.3. As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. As to the non-practising six months see PARA 1089.

5 Consolidated Regulations (2007) reg 41.2(ii)(1). No interval within the nine-month period may exceed one month: reg 41.2(ii)(1). The requirement that the practising period comprises either a continuous period of six months or a total period of six months completed within an overall period of nine months may be varied in writing by the Qualifications Committee: reg 41.2(ii)(2). Variation may be subject to such conditions as to additional training as the Qualifications Committee considers appropriate: reg 41.3.

6 Pupils may avail themselves of the exceptions (which are known as 'external training') only with the prior approval of the Qualifications Committee: Consolidated Regulations (2007) reg 46.1. An approved period of such training constitutes a period of practising pupillage for the purpose of reg 41.2(ii) (see text and notes 1-5). It may be undertaken at any time, but in no case counts towards the non-practising six months of pupillage: reg 46.3. A pupil is required, on arranging his external training, to give notice in writing to the Bar Standards Board in the form specified in Sch 14 Pt 1: reg 42.1.

7 As to the meaning of 'solicitor' see PARA 1063 note 14.

8 Consolidated Regulations (2007) reg 46.1(i). As to the meaning of 'United Kingdom' see PARA 1063 note 13. A solicitor or a lawyer qualified and practising in another member state with whom a period of training is spent pursuant to reg 46.1(i) or reg 46.1(ii) must be a person whose qualifications, experience and place of practice are comparable to those which in the case of a barrister would render him eligible to act as a pupil supervisor, unless in an individual case the Qualifications Committee permits a person with different qualifications, experience and place of practice to conduct the training: reg 46.4. As to pupil supervisors and their qualifications, experience etc see PARAS 1082-1087.

9 Consolidated Regulations (2007) reg 46.1(ii). See also note 8.

10 le in Brussels or Luxembourg: Consolidated Regulations (2007) reg 46.1(iii).

11 Consolidated Regulations (2007) reg 46.1(iii).

12 Consolidated Regulations (2007) reg 46.1(iv).

13 Consolidated Regulations (2007) reg 46.1(v). The permission of the pupil supervisor is required: reg 46.1(v).

14 Consolidated Regulations (2007) reg 46.1(vi). Such a body might be a law centre or pro bono or free representation unit: reg 46.1(vi). The permission of the pupil supervisor is required: reg 46.1(vi).

15 Consolidated Regulations (2007) reg 46.1(vii).

16 Consolidated Regulations (2007) reg 46.1.

17 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

18 Consolidated Regulations (2007) reg 52.2. The Bar Standards Board may in certain circumstances accept a certificate from the pupil supervisor's head of chambers or another acceptable person (see reg 52.3), and the Qualifications Committee may, on the pupil's request, grant a certificate themselves on the grounds that the pupil supervisor's signature has been wrongly withheld (see reg 52.4). In either case, the Bar Standards Board must issue a Full Qualification Certificate forthwith: reg 52.5. A pupil who has made an application to the Qualifications Committee and who is dissatisfied may request in writing that the Committee review its decision: see regs 51, 52.6. There is a fee: Sch 10 para 11.

19 le such further training as is referred to in Consolidated Regulations (2007) reg 41.1(ii): see PARA 1080.

20 Consolidated Regulations (2007) reg 52.2.

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1091. Pupil's obligations on conclusion of a pupillage.

Where on the conclusion of a period of pupillage¹ a pupil does not intend to serve another pupillage, he must give written notification to the Bar Council² and the Under-Treasurer³ of his Inn⁴ of any tenancy or employment he has secured, giving details of the chambers or employer⁵. If the pupil has not secured a tenancy or employment, he must give written notification to the Bar Council and the Under-Treasurer of his Inn as to whether he is seeking a tenancy or employment in England and Wales, whether he intends to practise abroad, or whether he is seeking other employment abroad, and in each case must give all relevant details⁶.

1 As to the obligation to undertake pupillage see PARA 1080. 'Pupillage' for these purposes includes any period of external training (see PARA 1090): Consolidated Regulations (2007) reg 53.2. The provisions of the Consolidated Regulations concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Ie the Records Office of the Bar Council: Consolidated Regulations (2007) reg 53.2.

3 As to the meaning of 'the Under-Treasurer' see PARA 1075 note 9.

4 As to the meaning of 'Inn' see PARA 1063 note 4.

5 Consolidated Regulations (2007) reg 53.2(i).

6 Consolidated Regulations (2007) reg 53.2(ii).

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D. RIGHTS AND DUTIES OF PUPILS

1092. Professional duties of a pupil.

During each pupillage¹ it is the duty of the pupil:

- 1631 (1) to be conscientious in receiving the instruction given²;
- 1632 (2) to apply himself full-time thereto³; and
- 1633 (3) to preserve the confidentiality of every client's affairs⁴.

A pupil is also under a general duty to comply with the provisions of the Consolidated Regulations concerned with pupillage⁵, the Code of Conduct⁶, and such other rules or guidelines relating to pupillage as may be approved from time to time by the Bar Standards Board⁷ in consultation with the Inns' Council⁸.

1 As to the obligation to undertake pupillage see PARA 1080. 'Pupillage' for these purposes includes any period of external training (see PARA 1090): Consolidated Regulations (2007) reg 53.1. The provisions of the Consolidated Regulations concerned with admission, training, call, and pupillage (ie Pts I-III (regs 2-25) and Pt V (regs 41-54)) are applicable to the generality of students wishing to undertake a course of study with a view to being called to the Bar; however, certain persons (generally lawyers already holding relevant qualifications, and some distinguished academics) may be exempted from fulfilling some or all of these requirements: see Pt IV (regs 26-40), reg 55; and PARAS 1078, 1098-1108. As to the Consolidated Regulations see PARA 1060.

2 Consolidated Regulations (2007) reg 53.1.

3 Consolidated Regulations (2007) reg 53.1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 801(b). A pupil may, however, with the permission of his pupil supervisor or head of chambers take part-time work which does not in their opinion materially interfere with his pupillage: para 801(b). As to pupil supervisors see PARAS 1082-1087. A registered European lawyer undertaking professional work in England and Wales is exempt from the requirements of the Code of Conduct governing the duties of pupils: see Annexe B (Registered European Lawyers Rules) r 6; and PARA 1166. As to the meaning of 'registered European lawyer' see PARA 1102 note 7. As to the Code of Conduct see PARA 1150.

4 Consolidated Regulations (2007) reg 53.1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 801(c). For this purpose, para 702 (duty of confidentiality: see PARA 1201) applies to a pupil in the same way as it does to his pupil supervisor and to every person whom he accompanies to court or whose papers he sees: para 801(c).

5 Consolidated Regulations (2007) para 801(a). The provisions of the Consolidated Regulations (2007) concerned with pupillage are contained in Pt V (regs 41-54) (see PARA 1080 et seq).

6 Consolidated Regulations (2007) reg 53.1. As to the duty to observe the Code of Conduct generally see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 105; and PARA 1150. A barrister who is a pupil of an employed barrister or who pursuant to the Consolidated Regulations (2007) reg 46 (see PARA 1090) spends any period of external training with an employed barrister or with a solicitor is treated for the purpose of the Code of Conduct as if he were during that period employed by the employed barrister's employer or by the solicitor's firm, as the case may be: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 803.2. As to employed barristers and their employers see PARA 1037. As to the meaning of 'solicitor' see PARA 1063 note 14.

7 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

8 Consolidated Regulations (2007) reg 53.1. As to the meaning of 'Inns' Council' see PARA 1053 note 1. As to Bar Council guidance see PARA 1150.

UPDATE

1092 Professional duties of a pupil

NOTE 3--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B amended on 1 September 2009.

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1093. Pupil's supply of legal services during non-practising six months.

During the non-practising six months of pupillage¹, a pupil may accept a noting brief². A pupil who has completed or been exempted from the non-practising six months³ may supply legal services as a barrister⁴ and exercise a right of audience which he has by reason of being a barrister⁵. In either case, the pupil must have the permission of his pupil supervisor⁶ or head of chambers⁷.

1 As to the obligation to undertake pupillage see PARA 1080. As to the non-practising six months see PARA 1089.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 802. As to the Code of Conduct see PARA 1150.

3 Certain solicitors, Northern Ireland barristers, Scottish advocates, qualified legal practitioners from common law jurisdictions outside England and Wales, European lawyers and, in exceptional circumstances, distinguished academics, who wish to be called to the Bar and practise as a barrister, may be wholly or partly exempted from undertaking a period of pupillage: see PARAS 1078, 1098-1108.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 802. As to the meaning of 'legal services' see PARA 1152 note 3.

5 Consolidated Regulations (2007) para 802. As to rights of audience generally see PARA 1109 et seq.

6 As to pupil supervisors see PARAS 1082-1087.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 802.

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1094. Pupil's entitlement to receive remuneration.

A barrister must pay any pupil (or, in the case of an employed barrister¹, ensure that a pupil is paid) for any work done for him which because of its value to him warrants payment², although a pupil is not, by virtue of his pupillage, entitled to be paid the national minimum wage³. The Bar Council has made specific provision in connection with the payments, including expenses, that members of chambers must make to each non-practising and practising pupil⁴.

1 As to employed barristers see PARA 1037.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 805. This is the case except where the pupil is in receipt of an award or remuneration which is paid on terms that it is in lieu of payment for any individual item of work: para 805. As to the Code of Conduct see PARA 1150.

3 See *Edmonds v Lawson* [2000] QB 501, [2000] 2 WLR 1091, CA; and PARA 1096. As to the national minimum wage, and qualification for it, see **EMPLOYMENT** vol 39 (2009) PARA 142 et seq.

4 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe R (Pupillage Funding and Advertising Requirements 2003) rr 1-3, 5.

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1095. Discrimination in relation to offers of pupillage.

It is unlawful for a barrister or a barrister's clerk in offering, or omitting to offer, a pupillage, or in administering or terminating a pupillage, to discriminate in any way against a woman¹ or against any person on grounds of race² or disability³. It is also unlawful for a barrister or a barrister's clerk to subject to harassment a person who is, or has applied to be, a pupil⁴.

The Bar Standards Board Equality and Diversity Code sets out the law and professional rules which prohibit discrimination and recommends good practice to chambers in relation to access to pupillages⁵.

1 See the Sex Discrimination Act 1975 s 35A(1), (2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 374. As to what constitutes discrimination under this Act see ss 1-5; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344 et seq.

2 See the Race Relations Act 1976 s 26A(1), (2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 456. As to what constitutes racial discrimination see ss 1-3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq.

3 See the Disability Discrimination Act 1995 s 7A(1), (2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 547. As to what constitutes disability discrimination see ss 1-3, 3A; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 et seq. It is thought that the enactment of s 7A has rendered nugatory the decision in *Horton v Higham* [2004] EWCA Civ 941, [2004] 3 All ER 852 (that a barrister's chambers did not discriminate on disability grounds against an applicant for pupillage because although the chambers was a 'trade organisation' for the purposes of the Disability Discrimination Act 1995 s 13 (as originally enacted) (which made it unlawful for such an organisation to discriminate against a disabled person in determining who should be offered membership of the organisation: see **DISCRIMINATION** vol 13 (2007 Reissue) PARA 541), pupillage did not amount to membership (see PARA 1097) and the applicant was not therefore protected by the legislation). Barristers and their clerks are under a duty to make adjustments to any provision, criterion or practice they apply, or any physical feature of premises they occupy, which disadvantages disabled persons applying for pupillages: see the Disability Discrimination Act 1995 s 7B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 548.

4 See the Sex Discrimination Act 1975 s 35A(2A); the Race Relations Act 1976 s 26A(3A); the Disability Discrimination Act 1995 s 7A(3); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 374, 456, 547. As to what constitutes harassment for these purposes see the Sex Discrimination Act 1975 s 4A; the Race Relations Act 1976 s 3A; the Disability Discrimination Act 1995 s 3B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 347, 444, 533.

5 See the Equality and Diversity Code for the Bar (approved 17 July 2004).

UPDATE

1095 Discrimination in relation to offers of pupillage

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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1096. Employment status of pupils.

A pupil who undertakes a period of pupillage¹ with a pupil supervisor² who is an employed barrister³ may be employed by the pupil supervisor's employer⁴, although for employment law purposes an agreement to undertake a period of pupillage is not in itself a 'contract of employment' and a pupil is not as such a 'worker'⁵. A pupillage agreement is neither a contract of apprenticeship nor anything analogous to it⁶, and a pupil is not a 'worker' because he does not undertake to perform any work or services for any other person⁷. Pupils are accordingly not as such entitled to be paid the national minimum wage⁸, and it is submitted that they are also unable to avail themselves of the provisions of the principal employment protection statutes⁹.

1 As to the obligation to undertake pupillage see PARA 1080.

2 As to pupil supervisors see PARAS 1082-1087.

3 As to employed barristers see PARA 1037.

4 As to the meaning of 'employer', in the context of an employed barrister, see PARA 1037 note 10.

5 See *Edmonds v Lawson* [2000] QB 501, [2000] 2 WLR 1091, CA.

6 Unlike an apprentice, a pupil is not obliged to do anything beyond that which advances his own training and development: see *Edmonds v Lawson* [2000] QB 501 at 516-518, [2000] 2 WLR 1091 at 1102-1104, CA, per Lord Bingham CJ.

7 See *Edmonds v Lawson* [2000] QB 501 at 519, [2000] 2 WLR 1091 at 1104-1105, CA.

8 *Edmonds v Lawson* [2000] QB 501, [2000] 2 WLR 1091, CA. As to the national minimum wage, and qualification for it, see the National Minimum Wage Act 1998; and **EMPLOYMENT** vol 39 (2009) PARA 142 et seq. As to the meanings of 'contract of employment' and 'worker' see s 54(2), (3); and **EMPLOYMENT** vol 39 (2009) PARAS 158, 161.

9 I.e. the Trade Union and Labour Relations (Consolidation) Act 1992 (see **EMPLOYMENT**) and the Employment Rights Act 1996 (see **EMPLOYMENT**). These define 'contract of employment' and 'worker' in terms corresponding to those contained in the National Minimum Wage Act 1998 (see note 8): see the Trade Union and Labour Relations (Consolidation) Act 1992 ss 295(1), 296(3); the Employment Rights Act 1996 s 230(2), (3); and **EMPLOYMENT** vol 39 (2009) PARAS 2, 5; **EMPLOYMENT** vol 40 (2009) PARA 847.

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1097. Pupil not a member of chambers.

A person undertaking pupillage in a set of barristers' chambers is not a member of those chambers¹ and, so long as he is a pupil, a self-employed barrister² may not become or hold himself out as a member of chambers or permit his name to appear anywhere as such a member³.

1 *Horton v Higham* [2004] EWCA Civ 941, [2004] 3 All ER 852.

2 As to self-employed barristers see PARA 1036.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 803.1. As to the Code of Conduct see PARA 1150.

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(vi) Admission and Call of Qualified Lawyers

A. SOLICITORS

1098. Admission of solicitors.

A solicitor¹ who has been permitted by the Law Society to exercise the right of audience² in all higher courts in relation to proceedings both civil and criminal is entitled to be called to the Bar³ and to practise as a barrister⁴ notwithstanding that he has not satisfied the requirements relating to the keeping of terms or to the passing of the examination for call to the Bar or the completion of the vocational course⁵. He is also exempt from all parts of the aptitude test⁶ and from the requirements as to the undertaking of pupillage⁷, although he must then keep terms by attending at least six qualifying sessions⁸ and must complete and sign the call declaration⁹. A solicitor who has been permitted to exercise the right of audience in the higher courts in relation to either civil or criminal proceedings (but not both), or who has no rights of audience, is also entitled to be called and to practise on the same terms, although he may be required to undertake a period of pupillage¹⁰, and a solicitor with no higher rights of audience may also be required to pass either or both of the oral parts of the aptitude test¹¹. Provision is made for the retention of a solicitor's rights of audience where he ceases to be subject to the jurisdiction of the Law Society in these circumstances¹².

1 As to the meaning of 'solicitor' see PARA 1063 note 14. This provision applies also to solicitors admitted and enrolled in Northern Ireland: Consolidated Regulations (2007) reg 35(a).

2 As to solicitors' rights of audience see PARA 732.

3 As to the Bar as a profession see PARA 1034. As to the requirements for call to the Bar generally see PARAS 1075-1078. Such a person is also entitled to be admitted to an Inn as a student without holding the required educational qualifications or a certificate of good character (ie as required by the Consolidated Regulations (2007) regs 2, 3: see PARAS 1064-1065), provided that before admission he declares (and if so required furnishes evidence) that he has ceased to practise and to be financially involved in any practice of a solicitor or legal attorney in any part of the world: reg 35(e)(iv). As to the meaning of 'Inn' see PARA 1063 note 4.

4 Consolidated Regulations (2007) reg 35(e)(ii), (v), (vii). Entitlement is subject to certification by the Qualifications Committee, who must deal with applications as soon as reasonably practicable and may refuse an application: see reg 35(d), (e)(i), (ii), (h), (i). As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. The Qualifications Committee's functions under Pt IV (regs 26-40) have been delegated by the Bar Council and the Inns: see reg 27. As to the Bar Council see PARAS 1042-1048. As to applications for certification see PARA 1099. As to practising as a barrister see PARA 1152 et seq. There is provision for these decisions to be reviewed by the Committee, and for an appeal from such a review to the Visitors of the Inns of Court: see reg 40, Sch 10 para 11. As to the jurisdiction of the Visitors generally see PARA 1284 et seq.

5 Consolidated Regulations (2007) reg 35(e)(v). As to these requirements so far as they relate to the generality of students see reg 22(b); and PARA 1075.

6 Ie the test set out in the Consolidated Regulations (2007) Sch 13. As to the test see further reg 30(d).

7 Consolidated Regulations (2007) reg 35(e)(iii).

8 Consolidated Regulations (2007) regs 9(a), 35(j). As to the meaning of 'qualifying session' see PARA 1076. A solicitor who has not complied with these requirements before being called to the Bar may be called notwithstanding such non-compliance, but must before being called undertake to the Masters of the Bench that

he will comply or complete his compliance within three years after call: reg 35(k). As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

9 Consolidated Regulations (2007) reg 35(e)(vi). As to the call declaration see Sch 5; and PARA 1077.

10 For the requirements as to the undertaking of pupillage see the Consolidated Regulations (2007) Pt V (regs 41-54); and PARAS 1080-1097.

11 Consolidated Regulations (2007) reg 35(f), (g). As to the effect of these requirements on existing rights of audience see reg 35(m).

12 See the Courts and Legal Services Act 1990 s 31C(1); and PARA 508.

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1099. Applications for call.

A solicitor¹ who wishes to be called to the Bar² and practise as a barrister³ may make a written application to the Qualifications Committee⁴ for that purpose⁵. The application must contain or be accompanied by:

- 1634 (1) particulars of the educational or professional qualifications which entitled the applicant to be admitted as a solicitor⁶;
- 1635 (2) particulars of his admission⁷;
- 1636 (3) particulars of any period of practice as a solicitor⁸;
- 1637 (4) a certificate of good standing issued by the Law Society of England and Wales or the Law Society of Northern Ireland⁹;
- 1638 (5) a declaration¹⁰ that:
 - 21
 - 1. (a) he has not on the grounds of professional misconduct or the commission of any criminal offence been prohibited from practising in any jurisdiction in which he has been admitted, and is not currently suspended from so practising¹¹;
 - 2. (b) no bankruptcy order¹² or directors disqualification order¹³ has been made against him, and he has not entered into an individual voluntary arrangement¹⁴ with his creditors¹⁵;
 - 3. (c) he is not aware of any circumstances which might lead to an event falling within either of these circumstances taking place¹⁶; and
 - 4. (d) he has disclosed to the Qualifications Committee in writing any circumstances affecting him which might reasonably be considered to be relevant to the question whether he should be permitted to be called to the Bar¹⁷;
- 22
 - 1639 (6) evidence (where applicable) that he is or has been entitled to exercise rights of audience as a solicitor¹⁸, specifying the rights concerned and the manner in which he has or had become entitled to exercise such rights¹⁹; and
 - 1640 (7) any other representations or evidence on which he may wish to rely in support of any application to be wholly or partially exempted from any of the requirements of the Consolidated Regulations²⁰.

The application must be in the prescribed form²¹ and must be accompanied by the prescribed fee²². A solicitor who is contemplating call to the Bar may, on providing to the Qualifications Committee such evidence as would be required in support of an application, but before taking steps to terminate practice as a solicitor, apply to the Committee for information concerning the requirements it would be likely to impose or the exemptions it would be likely to grant if he were to make an application²³.

¹ As to the meaning of 'solicitor' see PARA 1063 note 14. This provision applies also to solicitors admitted and enrolled in Northern Ireland: Consolidated Regulations (2007) reg 35(a). As to the Consolidated Regulations see PARA 1060.

² As to the right of solicitors to be called to the Bar see PARA 1098. As to the Bar as a profession see PARA 1034.

- 3 As to practising as a barrister see PARA 1152 et seq.
- 4 As to the meaning of 'Qualifications Committee' see PARA 1060 note 12.
- 5 Consolidated Regulations (2007) reg 35(a).
- 6 Consolidated Regulations (2007) reg 35(b)(i)(1). As to the meaning of 'applicant' see PARA 1060 note 13. As to the educational or professional qualifications required for admission as a solicitor see PARA 646 et seq.
- 7 Consolidated Regulations (2007) reg 35(b)(i)(2). As to admission and enrolment as a solicitor see PARA 661 et seq.
- 8 Consolidated Regulations (2007) reg 35(b)(i)(3).
- 9 Consolidated Regulations (2007) reg 35(b)(ii). The Qualifications Committee may entertain an application where a solicitor is unable to provide a certificate of good standing if it is satisfied that the circumstances are not such as to make it undesirable for him to be called to the Bar and to practise as a barrister: see reg 35(c).
- 10 The Qualifications Committee may entertain an application where a solicitor is unable to make such a declaration if it is satisfied that the circumstances are not such as to make it undesirable for him to be called to the Bar and to practise as a barrister: see the Consolidated Regulations (2007) reg 35(c).
- 11 Consolidated Regulations (2007) reg 35(b)(iii)(1). As to what constitutes professional misconduct see PARA 1247.
- 12 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.
- 13 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.
- 14 As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.
- 15 Consolidated Regulations (2007) reg 35(b)(iii)(2).
- 16 Consolidated Regulations (2007) reg 35(b)(iii)(3).
- 17 Consolidated Regulations (2007) reg 35(b)(iii)(4).
- 18 As to solicitors' rights of audience see PARA 732.
- 19 Consolidated Regulations (2007) reg 35(b)(iv).
- 20 Consolidated Regulations (2007) reg 35(b)(v).
- 21 Consolidated Regulations (2007) reg 35(b).
- 22 Consolidated Regulations (2007) reg 35(a), Sch 10 para 5.
- 23 Consolidated Regulations (2007) reg 35(l).

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B. NORTHERN IRELAND BARRISTERS, SCOTTISH ADVOCATES AND OTHER COMMON LAW PRACTITIONERS

1100. Admission of Northern Ireland barristers, Scottish advocates and common law practitioners.

Members of the Bar of Northern Ireland¹, members of the Faculty of Advocates in Scotland², and certain other common law practitioners³, are entitled, subject to the certification of the Qualifications Committee⁴, to practise as barristers in England and Wales without gaining the qualifications required of, or satisfying the other requirements imposed on, the generality of students⁵. Such a practitioner is eligible for call to the Bar⁶ notwithstanding that he has not satisfied the requirements relating to the keeping of terms or to the passing of the examination for call to the Bar or the completion of the vocational course⁷, although he must then keep terms by attending at least six qualifying sessions⁸ and may, at the discretion of the Qualifications Committee, be required to pass the aptitude test⁹ or a part of it¹⁰.

On being called to the Bar in accordance with these provisions, a practitioner is required to complete and sign the call declaration¹¹. Scottish advocates and other common law practitioners will then be required to undertake a period of pupillage¹².

1 Consolidated Regulations (2007) reg 36(a)(i). As to the Consolidated Regulations see PARA 1060.

2 Consolidated Regulations (2007) reg 36(a)(ii).

3 I.e. legal practitioners in other common law jurisdictions who have for a period of not less than three years regularly exercised rights of audience in superior courts which administer law which is substantially equivalent to the common law of England and Wales: Consolidated Regulations (2007) reg 36(a)(iii).

4 As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. The Qualifications Committee may refuse to authorise a practitioner to practise at the Bar of England and Wales: Consolidated Regulations (2007) regs 30(e)(iv), (f), 36(h). There is provision for these decisions to be reviewed by the Committee, and for an appeal from such a review to the Visitors of the Inns of Court: see reg 40, Sch 10 para 11. As to the jurisdiction of the Visitors generally see PARA 1284 et seq.

5 Consolidated Regulations (2007) reg 36(i). As to the qualifications required of, and the other requirements imposed on, the generality of persons seeking to enter the profession, see PARA 1063 et seq. As to applications for admission see PARA 1101. As to practising as a barrister see PARA 1152 et seq.

6 As to the Bar as a profession see PARA 1034. As to the requirements for call to the Bar generally see PARAS 1075-1078.

7 Consolidated Regulations (2007) regs 30(g), 36(i). As to these requirements so far as they relate to the generality of students see reg 22(b); and PARA 1075. Such practitioners are also entitled to be admitted to an Inn as a student without holding the required educational qualifications or a certificate of good character (ie as required by regs 2, 3: see PARAS 1064-1065): regs 30(g), 36(i). As to the meaning of 'Inn' see PARA 1063 note 4. As to the meaning of 'student' see PARA 1063 note 4; and see PARA 1073 note 1.

8 Consolidated Regulations (2007) regs 9(a), 30(h)(i), 36(i). As to the meaning of 'qualifying session' see PARA 1076. A practitioner who has not complied with these requirements before being called to the Bar may be called notwithstanding such non-compliance, but must before being called undertake to the Masters of the Bench that he will comply or complete his compliance within three years after call (regs 30(h)(ii), 36(i)), and the

required number of qualifying sessions may in any case be reduced at the discretion of the Qualifications Committee (regs 30(i), 36(i)). As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

9 le the test set out in Consolidated Regulations (2007) Sch 13. As to the test see further reg 30(d). There is a fee: see Sch 10 para 6.

10 Consolidated Regulations (2007) regs 30(e)(i)-(iii), (f), 36(g), (h). A Northern Ireland barrister self-employed for not less than three years is exempt from passing the whole of the aptitude test: reg 36(g).

11 Consolidated Regulations (2007) regs 30(j), 36(i). As to the call declaration see Sch 5; and PARA 1077.

12 Consolidated Regulations (2007) reg 36(j)(ii). For the requirements as to the undertaking of pupillage see Pt V (regs 41-54); and PARAS 1080-1097. The Qualifications Committee may grant exemptions from this requirement in any individual case to the extent that it is satisfied that the person's practical experience is such as to render the satisfaction of those requirements inappropriate: reg 36(j)(ii). Northern Ireland barristers who have completed pupillage in Northern Ireland are exempt from the requirements of Pt V: reg 36(j)(i).

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1101. Applications for call.

Members of the Bar of Northern Ireland, members of the Faculty of Advocates in Scotland, and other common law practitioners who wish to be called to the Bar and practise as a barrister¹ may make a written application to the Qualifications Committee² for that purpose³. The application must include:

- 1641 (1) particulars of the educational or professional qualifications relied upon as constituting him a qualified applicant⁴;
- 1642 (2) the original or a duly authenticated copy of every document relied upon as establishing those qualifications⁵;
- 1643 (3) particulars showing that he has reasonable grounds to expect that, upon call, he will be able to practise at the Bar of England and Wales or the Channel Islands⁶;
- 1644 (4) such evidence as is relied upon by the applicant to establish⁷ that:
 - 23 5. (a) he is of good character and repute⁸;
 - 6. (b) he has not on the ground of professional misconduct or the commission of a criminal offence been prohibited from practising in any jurisdiction in relation to which he is qualified, and is not currently suspended from practising⁹; and
 - 7. (c) no bankruptcy order¹⁰ or directors disqualification order¹¹ has been made against him, and he has not entered into an individual voluntary arrangement¹² with his creditors¹³; and
- 24 1645 (5) such representations or evidence as the applicant may wish to make in support of any application that he be wholly or partially exempted from passing an aptitude test¹⁴ or from undertaking a period of pupillage¹⁵.

The application must be in the prescribed form¹⁶ and must be accompanied by the prescribed fee¹⁷.

1 As to the right of such practitioners to be called to the Bar and to practise as barristers see PARA 1100. As to the Bar as a profession see PARA 1034. As to practising as a barrister see PARA 1152 et seq.

2 As to the meaning of 'Qualifications Committee' see PARA 1060 note 12.

3 Consolidated Regulations (2007) reg 36(c). As to the Consolidated Regulations see PARA 1060.

4 Consolidated Regulations (2007) reg 36(d)(i). As to the meaning of 'applicant' see PARA 1060 note 13. As to the certificates required as evidence of these matters see reg 36(e), Sch 9.

5 Consolidated Regulations (2007) reg 36(d)(ii). As to the certificates required as evidence of these matters see reg 36(e), Sch 9.

6 Consolidated Regulations (2007) reg 36(d)(iii). A written statement by the applicant is acceptable: see reg 36(e).

7 The Qualifications Committee may entertain an application where a solicitor is unable to establish such matters if it is satisfied that the circumstances are not such as to make it undesirable for him to be called to the Bar and to practise as a barrister: see Consolidated Regulations (2007) reg 36(f).

- 8 Consolidated Regulations (2007) reg 36(d)(iv)(1). As to the certificates required as evidence of these matters see reg 36(e), Sch 9.
- 9 Consolidated Regulations (2007) reg 36(d)(iv)(2).
- 10 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.
- 11 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.
- 12 As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.
- 13 Consolidated Regulations (2007) reg 36(d)(iv)(3).
- 14 An applicant may be required to pass the whole or part of an aptitude test: see the Consolidated Regulations (2007) reg 36(g); and PARA 1100.
- 15 Consolidated Regulations (2007) reg 36(d)(v). Certain applicants are required to undertake a period of pupillage: see reg 36(j); and PARA 1100. For the requirements as to the undertaking of pupillage see Pt V (regs 41-54); and PARAS 1080-1097.
- 16 Consolidated Regulations (2007) reg 36(b).
- 17 Consolidated Regulations (2007) reg 36(a), (c), Sch 10 para 5.

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C. EUROPEAN LAWYERS

(A) REGISTERED EUROPEAN LAWYERS

1102. Registration of European lawyers.

Registration as a European lawyer¹ enables a European practitioner to practise in England and Wales by following one of two routes: he may either apply to be called to the Bar under the special provisions applicable to registered European lawyers² or exercise his right to practise under his home professional title³.

A European lawyer who wishes to apply for registration with a view to practising in England and Wales may apply to the Qualifications Committee⁴ for a direction that he be registered by the Bar Standards Board⁵ and the Inn⁶ of his choice⁷; and, on receipt of the necessary certification and declarations⁸, the Qualifications Committee must direct that the applicant⁹ be registered by the Board and one of the Inns as a registered European lawyer¹⁰, unless it is of the opinion that a direction should not be given on public policy grounds¹¹. There are restrictions on multiple registrations¹² and provision is made for the consideration and rejection of applications and the withdrawal and suspension of registrations¹³. A registered European lawyer must observe the Code of Conduct¹⁴.

Registered European lawyers have a right to practise in England and Wales¹⁵ and rights of audience before all relevant courts¹⁶.

1 As to the meaning of 'European lawyer' see PARA 535.

2 As to these provisions see the Consolidated Regulations (2007) regs 29, 31, 32; and PARA 1104. As to the Consolidated Regulations see PARA 1060.

3 See the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, regs 6-14; and PARAS 534, 1166. In relation to a European lawyer, 'home professional title' means the professional title or any of the professional titles specified in relation to his home state in the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2 (see PARA 535 note 3) under which he is authorised in his home state to pursue professional activities; and 'home state' means the state listed in reg 2 in which a European lawyer acquired the authorisation to pursue professional activities under any of the professional titles appearing in reg 2 and, if he is authorised in more than one of those states, any of those states: reg 2(1); Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the Code of Conduct see PARA 1150.

4 As to the meaning of 'Qualifications Committee' see PARA 1060 note 12.

5 As to the meaning of 'Bar Standards Board' see PARA 1060 note 3.

6 As to the meaning of 'Inn' see PARA 1063 note 4.

7 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(1); Consolidated Regulations (2007) reg 28(a). As to the form of such an application see PARA 1103. A person so registered is known as a 'registered European lawyer': European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2(1); Introduction and Constitutions (2008) Pt I (Introduction) para 1; Consolidated Regulations (2007) Sch 1; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. The Inns and the Bar Standards Board are required to maintain a register of registered European lawyers: European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 15; Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B (Registered European Lawyers Rules) r 1. As to the maintenance and operation of the

register see Annexe B (Registered European Lawyers Rules) r 2. As to the Introduction and Constitutions see PARA 1042 note 8.

8 As to the certificates and declarations required to be submitted and made in support of an application for registration see the Consolidated Regulations (2007) reg 28(b)(i), (ii); and PARA 1103.

9 As to the meaning of 'applicant' see PARA 1060 note 13.

10 Consolidated Regulations (2007) reg 28(c). Note that registration is not the same as call to the Bar, for which there are further procedures: see PARA 1104. The direction must be given effect by the Bar Standards Board and such of the Inns as received the applicant's application for membership: European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 17(1); Consolidated Regulations (2007) reg 28(c). The competent authority in the applicant's home state must be informed of the registration: European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 17(2); Consolidated Regulations (2007) reg 28(d).

11 Consolidated Regulations (2007) reg 33. The Qualifications Committee may refuse to give a direction if in its opinion it would be against public policy to do so, in particular because of disciplinary proceedings, complaints or incidents of any kind, although it must give reasons: reg 33. There is provision for these decisions to be reviewed by the Committee, and for an appeal from such a review to the Visitors of the Inns of Court: see reg 40, Sch 10 para 11. As to the jurisdiction of the Visitors generally see PARA 1284 et seq.

12 See the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, regs 16(5), 18.

13 See the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, regs 19, 20.

14 See the Consolidated Regulations (2007) reg 28(e), (f). As to the duty to observe the Code of Conduct generally see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 105, 107, Annexe B (Registered European Lawyers Rules) r 6; and PARAS 1150, 1166. A registered European lawyer must inform the Bar Standards Board of any investigation into his conduct by his home professional body, any findings of professional misconduct made by his professional body, and the withdrawal or suspension of his authorisation in his home state to pursue professional activities under his home professional title: Annexe B (Registered European Lawyers Rules) r 7. 'Home professional body' means the body in a member state which authorises a European lawyer to pursue professional activities under any of the professional titles specified in the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 2 (see PARA 535 note 3) and, if he is authorised in more than one member state, means any such body: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

15 See PARA 1166.

16 See PARA 548.

UPDATE

1102 Registration of European lawyers

NOTES 7, 14--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B amended on 1 September 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(2) EDUCATION AND TRAINING/(vi) Admission and Call of Qualified Lawyers/C. EUROPEAN LAWYERS/(A) Registered European Lawyers/1103. Applications for registration.

1103. Applications for registration.

An application for registration as a European lawyer¹ must be in the prescribed form², must be accompanied by the prescribed fee³, and must contain or be accompanied by:

- 1646 (1) a certificate, not more than three months old at the date of receipt of the application, attesting to the registration of the applicant⁴ with the competent authority in his home state as a lawyer qualified to practise in his home state under his home professional title⁵; and
- 1647 (2) a declaration that the applicant:
25
- 8. (a) has not on the ground of professional misconduct or the commission of a criminal offence been prohibited from practising in his home state, and is not currently suspended from so practising⁶;
- 9. (b) has not had a bankruptcy order⁷ or directors disqualification order⁸ made against him, and has not entered into an individual voluntary arrangement⁹ with his creditors¹⁰;
- 10. (c) is not aware of any other circumstances relevant to his fitness to practise under his home professional title in England and Wales¹¹; and
- 11. (d) is not registered with the Law Society of England and Wales, of Scotland or of Northern Ireland¹².
- 26

1 As to the meaning of 'European lawyer' see PARA 535. As to applications for registration see PARA 1102.

2 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(4); Consolidated Regulations (2007) reg 28(b). As to the Consolidated Regulations see PARA 1060.

3 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(4); Consolidated Regulations (2007) reg 28(b), Sch 10 para 5.

4 As to the meaning of 'applicant' see PARA 1060 note 13.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(2)-(4); Consolidated Regulations (2007) reg 28(b)(i). As to the meanings of 'home state' and 'home professional title' see PARA 1102 note 3.

6 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(4); Consolidated Regulations (2007) reg 28(b)(ii)(1).

7 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.

8 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.

9 As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.

10 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(4); Consolidated Regulations (2007) reg 28(b)(ii)(2).

11 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(4); Consolidated Regulations (2007) reg 28(b)(ii)(3).

12 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 16(4); Consolidated Regulations (2007) reg 28(b)(ii)(4).

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1104. Call to the Bar.

A registered European lawyer¹ practising under his home professional title² who has effectively and regularly pursued³ an activity in England and Wales in English law, including Community law, is entitled to be called to the Bar⁴ and to practise as a barrister⁵ notwithstanding that he has not satisfied the requirements relating to the keeping of terms or to the passing of the examination for call to the Bar or the completion of the vocational course⁶. Call is subject to the authorisation of the Qualifications Committee, on application⁷. If the applicant⁸ has pursued the activity in question for three or more years since his registration, the Qualifications Committee must verify the effective and regular nature of the activity before authorising the applicant's call⁹. If the applicant has pursued the activity for less than three years since registration, the Qualifications Committee must assess¹⁰ both his effective and regular pursuit of a professional activity in English law and his capacity to continue such activity before authorising his call¹¹. The Qualifications Committee may also refuse to give an authorisation on public policy grounds¹². A successful applicant must keep terms by attending at least six qualifying sessions before being called¹³, and must complete and sign the call declaration¹⁴.

1 As to the meaning of 'European lawyer' see PARA 535. As to the meaning of 'registered European lawyer' see PARA 1102 note 7.

2 As to the meaning of 'home professional title' see PARA 1102 note 3.

3 'Effective and regular pursuit' means actual exercise of an activity without any interruption other than that resulting from the events of everyday life: Consolidated Regulations (2007) regs 31(c), 32(c). As to the Consolidated Regulations see PARA 1060.

4 As to the Bar as a profession see PARA 1034. As to the requirements for call to the Bar generally see PARAS 1075-1078.

5 As to practising as a barrister see PARA 1152 et seq. A registered European lawyer must not hold himself out to be a barrister, must always use his home professional title, and must indicate the name of his home professional body or the court before which he is entitled to practise and that he is registered with the Bar Standards Board as a European lawyer: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B (Registered European Lawyers Rules) rr 3, 4. As to the Code of Conduct see PARA 1150. As to the meaning of 'home professional body' see PARA 1102 note 14. As to registration as a European lawyer see PARA 1103.

6 Consolidated Regulations (2007) regs 30(g)(i), 31(b), (h), 32(b), (h). As to the requirements relating to the keeping of terms or to the passing of the examination for call to the Bar or the completion of the vocational course so far as they relate to the generality of applicants see reg 22(b); and PARAS 1075-1077.

7 Consolidated Regulations (2007) regs 31(f)(i), 32(f)(i). As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. Authorisation is by the issue of a certificate (regs 31(f)(i), 32(f)(i)), and may be refused (regs 31(f)(ii), 32(f)(ii)). Authorisation or refusal must be notified within four months of an application: see regs 31(g), 32(g). As to the form of applications see PARA 1105.

8 As to the meaning of 'applicant' see PARA 1060 note 13.

9 Consolidated Regulations (2007) reg 31(b), (e).

10 Assessment is by means of an interview: Consolidated Regulations (2007) reg 32(e).

11 Consolidated Regulations (2007) reg 32(b), (e).

12 Consolidated Regulations (2007) reg 33. The Qualifications Committee may refuse to give a direction if in its opinion it would be against public policy to do so (in particular because of disciplinary proceedings, complaints or incidents of any kind), although reasons must be given: reg 33. If the Qualifications Committee decides to refuse an application made under reg 31 or reg 32, it may with the written consent of the applicant treat the application as being made also under reg 30 (see PARAS 1106-1107) and deal with it accordingly: reg 34. There is provision for these decisions to be reviewed by the Committee, and for an appeal from such a review to the Visitors of the Inns of Court: see reg 40, Sch 10 para 11. As to the jurisdiction of the Visitors generally see PARA 1284 et seq.

13 Consolidated Regulations (2007) regs 9(a), 30(h)(i), 31(h), 32(h). As to the meaning of 'qualifying session' see PARA 1076. A practitioner who has not complied with these requirements before being called to the Bar may be called notwithstanding such non-compliance, but must before being called undertake to the Masters of the Bench that he will comply or complete his compliance within three years after call (regs 30(h)(ii), 31(h), 32(h)), and the required number of qualifying sessions may in any case be reduced at the discretion of the Qualifications Committee (regs 30(i), 31(h), 32(h)). As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

14 Consolidated Regulations (2007) regs 30(j), 31(h), 32(h). As to the call declaration see Sch 5; and PARA 1077.

UPDATE

1104 Call to the Bar

NOTE 5--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B amended on 1 September 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(2) EDUCATION AND TRAINING/(vi) Admission and Call of Qualified Lawyers/C. EUROPEAN LAWYERS/(A) Registered European Lawyers/1105. Applications for call.

1105. Applications for call.

A registered European lawyer¹ who wishes to be called to the Bar² and to practise as a barrister³ must submit a written application to the Qualifications Committee⁴. Applications must contain or be accompanied by:

- 1648 (1) a certificate⁵ attesting to his registration with the competent authority in his home state⁶ as a lawyer qualified to practise in his home state under his home professional title⁷;
- 1649 (2) a certificate attesting to his registration with the Bar Council⁸ and an Inn⁹ as a registered European lawyer¹⁰;
- 1650 (3) evidence of the activity pursued by him in England and Wales in English law including Community law¹¹;
- 1651 (4) such evidence as is relied on by the applicant¹² to establish:
 - 27 12. (a) that he is of good character and repute¹³;
 - 13. (b) that he has not on the ground of professional misconduct or the commission of a criminal offence been prohibited from practising in his home state, and is not currently suspended from so practising¹⁴; and
 - 14. (c) that no bankruptcy order¹⁵ or directors disqualification order¹⁶ has been made against him, and he has not entered into an individual voluntary arrangement¹⁷ with his creditors¹⁸; and
- 28 1652 (5) English translations of every certificate and other document on which he relies and which is not in the English language¹⁹.

An applicant who has pursued the activity in English law for less than three years since registration must additionally submit such evidence as is relied on by him to show any knowledge and professional experience of English law, and any attendance at lectures or seminars on English law, giving as full information as practicable of such matters with accompanying documentation²⁰.

Applications must also be accompanied by the prescribed fee²¹.

1 As to the meaning of 'European lawyer' see PARA 535. As to the meaning of 'registered European lawyer' see PARA 1102 note 7.

2 As to the Bar as a profession see PARA 1034. As to the requirements for call to the Bar generally see PARAS 1075-1078.

3 As to the entitlement of registered European lawyers to be called to the Bar and to practise as barristers see PARA 1104. As to practising as a barrister see PARA 1152 et seq.

4 Consolidated Regulations (2007) regs 29, 31(a), (d), 32(a), (d). As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. As to the Consolidated Regulations see PARA 1060.

5 For these purposes, certificates must be not more than three months old at the date of receipt of the application by the Qualifications Committee: Consolidated Regulations (2007) regs 31(d)(i), 32(d)(i).

- 6 As to the meaning of 'home state' see PARA 1102 note 3.
- 7 Consolidated Regulations (2007) regs 31(d)(i), 32(d)(i). As to the meaning of 'home professional title' see PARA 1102 note 3.
- 8 As to the meaning of 'Bar Council' see PARA 1042 note 1.
- 9 As to the meaning of 'Inn' see PARA 1063 note 4.
- 10 Consolidated Regulations (2007) regs 31(d)(i), 32(d)(i).
- 11 Consolidated Regulations (2007) regs 31(d)(ii), 32(d)(i). The evidence must give as full information as practicable of such activity, with accompanying documentation, and of the number of matters the applicant has dealt with and their nature: regs 31(d)(ii), 32(d)(i). The Qualifications Committee may request the applicant to provide, orally or in writing, clarification or further details of the relevant information and documentation: regs 31(e), 32(d)(i).
- 12 As to the meaning of 'applicant' see PARA 1060 note 13.
- 13 Consolidated Regulations (2007) regs 31(d)(iii)(1), 32(d)(i).
- 14 Consolidated Regulations (2007) regs 31(d)(iii)(2), 32(d)(i).
- 15 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.
- 16 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.
- 17 As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.
- 18 Consolidated Regulations (2007) regs 31(d)(iii)(3), 32(d)(i).
- 19 Consolidated Regulations (2007) regs 31(d)(iv), 32(d)(i).
- 20 Consolidated Regulations (2007) reg 32(d)(ii). The Qualifications Committee may request the applicant to provide, orally or in writing, clarification or further details of the relevant information and documentation: reg 32(e).
- 21 Consolidated Regulations (2007) regs 29(a), 31(d), 32(d), Sch 10 para 5.

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(B) OTHER EUROPEAN LAWYERS

1106. Call to the Bar.

A lawyer who is a national of, and is fully qualified in, another relevant state¹, is entitled to be called to the Bar² and to practise as a barrister³ notwithstanding that he has not satisfied the requirements relating to the keeping of terms or to the passing of the examination for call to the Bar or the completion of the vocational course⁴. Call is subject to the authorisation of the Qualifications Committee, on application⁵; in particular, that Committee may require the applicant⁶ to pass the aptitude test⁷ or a part of it⁸. The Qualifications Committee may also refuse to give an authorisation on public policy grounds⁹. A successful applicant must also keep terms by attending at least six qualifying sessions¹⁰, and must complete and sign the call declaration¹¹; he is not, however, required to undertake a period of pupillage¹².

1 'Relevant state' means a member state, Norway, Liechtenstein or Switzerland; and 'another relevant state' means a relevant state not including the United Kingdom: Consolidated Regulations (2007) Sch 1. As to the meaning of 'member state' see PARA 1069 note 4.

2 As to the Bar as a profession see PARA 1034. As to the requirements for call to the Bar generally see PARAS 1075-1078.

3 As to practising as a barrister see PARA 1152 et seq.

4 Consolidated Regulations (2007) reg 30(a), (g). As to the Consolidated Regulations see PARA 1060. As to the requirements relating to the keeping of terms or to the passing of the examination for call to the Bar or the completion of the vocational course so far as they relate to the generality of applicants see reg 22(b); and PARAS 1075-1077. Qualified foreign nationals who are entitled to be called to the Bar under these provisions are also entitled to be admitted to an Inn as a student without holding the required educational qualifications or a certificate of good character (ie as required by regs 2, 3: see PARAS 1064-1065): reg 30(g). As to the meaning of 'Inn' see PARA 1063 note 4. As to the meaning of 'student' see PARA 1063 note 4; and see PARA 1073 note 1.

5 Consolidated Regulations (2007) reg 30(e). As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. Authorisation is by the issue of a certificate, and may be refused: reg 30(e). Authorisation or refusal must be notified within four months of an application: see reg 30(f). As to the form of applications see PARA 1107. There is provision for these decisions to be reviewed by the Committee, and for an appeal from such a review to the Visitors of the Inns of Court: see reg 40, Sch 10 para 11. As to the jurisdiction of the Visitors generally see PARA 1284 et seq.

6 As to the meaning of 'applicant' see PARA 1060 note 13.

7 Ie the test set out in the Consolidated Regulations (2007) Sch 13. As to the requirements concerning the aptitude test see further reg 30(d). There is a fee: see Sch 10 para 6.

8 Consolidated Regulations (2007) reg 30(e)(i)-(iii).

9 Consolidated Regulations (2007) reg 33. The Qualifications Committee may refuse to give a direction if in its opinion it would be against public policy to do so (in particular because of disciplinary proceedings, complaints or incidents of any kind), although reasons must be given: reg 33.

10 Consolidated Regulations (2007) regs 9(a), 30(h)(i). As to the meaning of 'qualifying session' see PARA 1076. A practitioner who has not complied with these requirements before being called to the Bar may be called notwithstanding such non-compliance, but must before being called undertake to the Masters of the Bench that he will comply or complete his compliance within three years after call (reg 30(h)(ii)), and the required number

of qualifying sessions may in any case be reduced at the discretion of the Qualifications Committee (reg 30(i)). As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

11 Consolidated Regulations (2007) reg 30(j). As to the call declaration see Sch 5; and PARA 1077.

12 Consolidated Regulations (2007) reg 30(k). For the requirements as to the undertaking of pupillage see Pt V (regs 41-54); and PARAS 1080-1097.

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1107. Applications for call.

A lawyer who is qualified in another relevant state¹ who wishes to be called to the Bar² and to practise as a barrister³ must submit a written application to the Qualifications Committee⁴. Applications must contain or be accompanied by:

- 1653 (1) particulars of the diploma⁵ or other evidence relied on as entitling him to authority to practise⁶;
- 1654 (2) every certificate or other document relied on by the applicant⁷ as establishing any matter required to be established relating to his right to practise and his professional experience⁸;
- 1655 (3) such evidence as is relied on by the applicant to establish⁹ that:
 - 29 15. (a) he is of good character and repute¹⁰;
 - 16. (b) he has not on the ground of professional misconduct or the commission of a criminal offence been prohibited from practising in any relevant state in which he qualified or practised, and is not currently suspended from so practising¹¹; and
 - 17. (c) no bankruptcy order¹² or directors disqualification order¹³ has been made against him, and he has not entered into an individual voluntary arrangement¹⁴ with his creditors¹⁵;
- 30 1656 (4) such representations or evidence as the applicant may wish to make or rely upon in support of any application that he be wholly or partially exempted from passing an aptitude test¹⁶;
- 1657 (5) any other representations or material that the applicant may wish to rely upon in support of his application¹⁷;
- 1658 (6) English translations of every certificate and other document on which he relies and which is not in the English language¹⁸; and
- 1659 (7) particulars of any previous applications made in this regard, where relevant¹⁹.

Applications must be in the prescribed form and must be accompanied by the prescribed fee²⁰.

1 As to the meaning of 'another relevant state' see PARA 1106 note 1.

2 As to the Bar as a profession see PARA 1034. As to the requirements for call to the Bar generally see PARAS 1075-1078.

3 As to the entitlement of lawyers qualified in other member states to be called to the Bar and to practise as barristers see PARA 1106. As to practising as a barrister see PARA 1152 et seq.

4 Consolidated Regulations (2007) regs 29, 30(a). As to the Consolidated Regulations see PARA 1060. As to the meaning of 'Qualifications Committee' see PARA 1060 note 12.

5 'Diploma' means any diploma, certificate or other evidence of formal qualifications awarded by a competent authority in a relevant state: Consolidated Regulations (2007) Sch 1. There are two types of diploma for these purposes. The first is one which shows that the holder: (1) has successfully completed a post-secondary course of at least three years' duration (or equivalent duration part-time) at a university or establishment of higher education or establishment of similar level; (2) has successfully completed any

additional professional training required; and (3) has the qualifications required for practising a regulated profession in that state: Sch 1. Regarding this type of diploma, either the education and training so attested must have been received mainly within the European Union, or the holder must have had at least three years' professional experience certified by a competent authority in that state (being a state which recognised a qualification obtained in a non-member state): Sch 1.

The second type of diploma is one awarded by a competent authority in a member state on the successful completion of education and training received within the European Union, and which: (a) has been recognised by a competent authority in that state as equivalent in level to the first type of diploma; and (b) confers the same rights in respect of the practice of a regulated profession in that state: Sch 1.

6 Consolidated Regulations (2007) reg 30(b)(i). 'Authority to practise' means authority to practise pursuant to the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781: Consolidated Regulations (2007) reg 30(b)(i).

7 As to the meaning of 'applicant' see PARA 1060 note 13.

8 Consolidated Regulations (2007) reg 30(b)(ii). The reference in the text to the establishment of any matter relating to the applicant's right to practise and his professional experience is a reference to the establishment of any matter required to be established pursuant to the European Communities (Recognition of Professional Qualifications) Regulations 2007, SI 2007/2781: Consolidated Regulations (2007) reg 30(b)(ii). The original or a duly authenticated copy of each document, together with an English translation where necessary, must be submitted: reg 30(b)(ii).

9 The Qualifications Committee may entertain an application where an applicant is unable to establish any of the matters referred to in the Consolidated Regulations (2007) reg 30(b)(iii) (see text to notes 10-15) if it is satisfied that the circumstances are not such as to make it undesirable for him to be called to the Bar and to practise as a barrister: see the Consolidated Regulations (2007) reg 30(c).

10 Consolidated Regulations (2007) reg 30(b)(iii)(1).

11 Consolidated Regulations (2007) reg 30(b)(iii)(2). As to what constitutes professional misconduct see PARA 1247.

12 As to the meaning of 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.

13 As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq.

14 As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.

15 Consolidated Regulations (2007) reg 30(b)(iii)(3).

16 Consolidated Regulations (2007) reg 30(b)(iv). Certain applicants may be required to pass the aptitude test: see PARA 1106.

17 Consolidated Regulations (2007) reg 30(b)(v). This may include particulars of the arrangements which he has made or proposes to make as to taking up practice as a barrister if and when he is called to the Bar: reg 30(b)(v).

18 Consolidated Regulations (2007) reg 30(b)(vi).

19 Consolidated Regulations (2007) reg 30(b)(vii).

20 Consolidated Regulations (2007) regs 29(a), 30(b), Sch 10 para 5.

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D. ACADEMICS

1108. Call to the Bar.

An experienced and distinguished legal academic¹ may be called to the Bar² notwithstanding that he has not satisfied the requirements for call applicable to the generality of students³, and for this purpose may apply to the Qualifications Committee⁴ for a relaxation⁵ of the applicable requirements⁶. In considering the application⁷, the Committee must have regard to all the circumstances of the case including (but not limited to):

- 1660 (1) the applicant's academic achievements⁸;
- 1661 (2) his standing and distinction as a teacher of law⁹;
- 1662 (3) the nature and extent of the applicant's contacts with self-employed barristers¹⁰;
- 1663 (4) the applicant's intentions in relation to practise at the Bar and any arrangements made for the purpose of fulfilling those intentions¹¹; and
- 1664 (5) the benefits to the Bar which may be expected to flow from the applicant's call¹².

The applicant may also be required to pass the aptitude test¹³ or one or more parts of it¹⁴.

This is an exceptional route by which a person may be called to the Bar and a relaxation should be granted only in cases where the Legal Academics Committee and the Qualifications Committee are satisfied both that the applicant is of such academic distinction, or likely to be of such value to the profession, that his admission by such a route is justified, and that no useful purpose would be satisfied by requiring him to comply with the requirements or provisions proposed to be relaxed¹⁵. There is no right of appeal, although the Qualifications Committee may review a negative decision¹⁶.

1 le a person who is a teacher of the law of England and Wales: Consolidated Regulations (2007) reg 55(a). As to the Consolidated Regulations see PARA 1060.

2 As to the Bar as a profession see PARA 1034.

3 Consolidated Regulations (2007) reg 55(a). As to the requirements for call to the Bar generally see Pts I-V (regs 1-54); and PARAS 1075-1077.

4 As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. Applications are to be made in such manner as the Qualifications Committee may prescribe and must be accompanied by a fee: see Consolidated Regulations (2007) reg 55(b).

5 For these purposes, 'relaxation' includes, but is not limited to, the relaxation or modification of, the complete or partial exemption from, the complete or partial dispensation from compliance with, and the conditional or unconditional waiver or excusing of, any breach of or non-compliance with any requirement or provision contained in the Consolidated Regulations (2007) Pts I-V (see PARA 1063 et seq): reg 55(g). 'Relax' is to be construed accordingly: reg 55(g). These powers of relaxation are in addition to and not in substitution for the power referred to in reg 58 (see PARA 1060) and every other power of relaxation conferred by the Consolidated Regulations: reg 55(i).

6 Consolidated Regulations (2007) reg 55(a).

- 7 The application is considered in the first instance by a sub-committee of the Qualifications Committee known as the Legal Academics Committee, which must make such recommendations as it thinks fit as to the relaxation (if any) which in its opinion ought to be granted, but the Qualifications Committee is not bound to accept any such recommendation: Consolidated Regulations (2007) reg 55(c).
- 8 Consolidated Regulations (2007) reg 55(d), (e)(i). As to the meaning of 'applicant' see PARA 1060 note 13.
- 9 Consolidated Regulations (2007) reg 55(d), (e)(ii).
- 10 Consolidated Regulations (2007) reg 55(d), (e)(iii). As to self-employed barristers see PARA 1036.
- 11 Consolidated Regulations (2007) reg 55(d), (e)(iv).
- 12 Consolidated Regulations (2007) reg 55(d), (e)(v).
- 13 Is the test set out in the Consolidated Regulations (2007) Sch 13. As to the test see further reg 30(d). There is a fee: see Sch 10 para 6.
- 14 See the Consolidated Regulations (2007) reg 55(h).
- 15 Consolidated Regulations (2007) reg 55(d), (f).
- 16 See the Consolidated Regulations (2007) reg 55(j). A wholly unsuccessful applicant may not reapply within three years, but an applicant whose application is wholly or partially successful may make an application for a further relaxation at any time: see reg 55(k).

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(3) LEGAL RIGHTS AND DUTIES

(i) Rights of Audience

A. COURTS IN ENGLAND AND WALES

(A) GENERAL RIGHTS OF AUDIENCE

1109. Barristers having rights of audience before every court.

Until a day to be appointed, rights of audience are determined solely in accordance with the provisions of the Courts and Legal Services Act 1990¹. Every barrister who has been called to the Bar by an Inn of Court² and has not been disbarred or suspended from practice³ is deemed by virtue of the Courts and Legal Services Act 1990⁴ to have been granted by the Bar Council⁵ a right of audience in relation to all proceedings before every court⁶. The rights of audience thus deemed to have been granted to barristers are exercisable in accordance with the qualification regulations and rules of conduct of the Bar Council which have been approved for this purpose⁷. Such rights of audience are not exclusive⁸.

As from a day to be appointed a right of audience is a reserved legal activity for the purposes of the Legal Services Act 2007⁹, and a barrister is authorised by the Bar Standards Board to carry on that activity¹⁰. During the transitional period¹¹, every barrister is deemed to be authorised by the Bar Standards Board to exercise a right of audience¹² in accordance with the Board's regulatory arrangements¹³, and provided he has a current practising certificate¹⁴.

1 The Courts and Legal Services Act 1990 ss 27 (see PARA 497), 31 and 31C are repealed by the Legal Services Act 2007 Sch 21 paras 83, 84(d), (g), Sch 23 as from a day to be appointed. At the date at which this volume states the law no such day had been appointed.

2 As to call to the Bar see PARAS 1075-1078. As to the Inns of Court see PARAS 1050-1052.

3 As to disbarment and suspension see PARAS 1278-1279.

4 Prior to the enactment of the Courts and Legal Services Act 1990, it was for the judges of each court collectively to decide, as an incident of their inherent jurisdiction to regulate their own proceedings, what categories of person should be permitted to appear as advocates in that court, and to promulgate any changes to established general practice by practice directions: see *Abse v Smith* [1986] QB 536, [1986] 1 All ER 350, CA.

5 The Bar Council is an authorised body for the purposes of the Courts and Legal Services Act 1990: see s 27(9); and PARA 497. As to the meaning of 'authorised body' see PARA 329 note 2. As to the meaning of 'right of audience' see PARA 495 note 3. As to the meaning of 'proceedings' see PARA 495 note 3. As to the meaning of 'court' see PARA 426 note 12.

6 See the Courts and Legal Services Act 1990 s 31(1), (3) (s 31 substituted by the Access to Justice Act 1999 s 36). See also note 1.

7 Courts and Legal Services Act 1990 s 31(1) (as substituted: see note 6). See note 1. The relevant qualification regulations and rules of conduct are contained in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) (see PARA 1150) and the Consolidated Regulations (2007) (see PARA 1060).

8 See the Courts and Legal Services Act 1990 ss 27, 31(2)(a), 31C; and PARAS 497, 508.

9 As to reserved legal activities see PARA 512.

10 As to authorised persons see PARA 515 et seq. The Bar Standards Board is an existing regulator for the purposes of the Legal Services Act 2007: see s 20, Sch 4 para 1; and PARA 358 et seq. The Legal Services Act 2007 refers to the General Council of the Bar (see PARA 1042 note 1). However the body responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

11 As to the meaning of 'transitional period' see PARA 516 note 9.

12 Legal Services Act 2007 s 22, Sch 5 para 4(1), (2)(a). During the transitional period every barrister is also authorised to carry on the following activities: (1) reserved instrument activities; (2) probate activities; (3) the administration of oaths: Sch 5 para 4(1), (2)(b)-(d). During the transitional period every registered European lawyer is also deemed to be authorised to carry on such activities: see Sch 5 para 5. As to registered European lawyers see PARA 1102. Members of the Bar not in actual practice are to continue to have the rights conferred by the Patents Act 1977 s 102A(2) (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 640): see Sch 5 para 6. As to non-practising barristers see PARA 1035.

13 Legal Services Act 2007 s 22, Sch 5 para 4(1), (3). As to the Bar's regulatory arrangements see PARA 1049.

14 Legal Services Act 2007 s 22, Sch 5 para 4(1), (4). As to practising certificates see PARA 1155 et seq.

UPDATE

1109 Barristers having rights of audience before every court

TEXT AND NOTES--Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

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1110. Power to determine rights of audience in absence of statute.

In the absence of any statutory provision in point there is no common law right to be legally represented¹. A tribunal is master of its own procedure and has, as an incident of this power, a discretion, where the matter is not governed by statute, to determine whether or not to permit legal representation and, if so, what categories of person to admit as advocates². This discretion must, however, be exercised in accordance with the rules of natural justice³ and the right to a fair hearing enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms⁴. Whether a fair hearing requires that the parties be legally represented in a particular case, so that the tribunal could not properly refuse such representation, will depend on such factors as the nature and complexity of the proceedings, the seriousness of the potential outcome to the person affected, the need for a speedy determination, and the capacity of the person affected to present his case⁵.

1 *R v Board of Visitors of HM Prison, The Maze, ex p Hone* [1988] AC 379 at 389-391, [1988] 1 All ER 321 at 325-326, HL, distinguishing *R v St Mary Abbots, Kensington Assessment Committee* [1891] 1 QB 378, CA. See also *Pett v Greyhound Racing Association Ltd (No 2)* [1970] 1 QB 46 at 63, [1969] 2 All ER 221 at 227-228 per Lyell J.

2 *R v Board of Visitors of HM Prison, The Maze, ex p Hone* [1988] AC 379, [1988] 1 All ER 321, HL; *R v Secretary of State for Home Department, ex p Tarrant* [1985] QB 251, [1984] 1 All ER 799, CA; *Enderby Town Football Club Ltd v Football Association Ltd* [1971] Ch 591 at 605, [1971] 1 All ER 215 at 218, CA, per Lord Denning MR; and see further PARA 1109. Quaere whether a domestic tribunal is entitled to lay down an absolute rule never to allow a lawyer to appear before it: see *Enderby Town Football Club Ltd v Football Association Ltd*; and **JUDICIAL REVIEW** vol 61 (2010) PARA 642.

3 *R v Board of Visitors of HM Prison, The Maze, ex p Hone* [1988] AC 379, [1988] 1 All ER 321, HL; *R v Secretary of State for Home Department, ex p Tarrant* [1985] QB 251, [1984] 1 All ER 799, CA.

4 See the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmdr 8969) art 6(3); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 145. There is no absolute right to representation: see *Engel v Netherlands (No 1)* (1967) 1 EHRR 647 at 678-679, ECtHR; and see also *Poitrinol v France* (1993) 18 EHRR 130, ECtHR.

5 See *R v Secretary of State for Home Department, ex p Tarrant* [1985] QB 251, [1984] 1 All ER 799, CA; approved in *R v Board of Visitors of HM Prison, The Maze, ex p Hone* [1988] AC 379, [1988] 1 All ER 321, HL. See also *Maynard v Osmond* [1977] QB 240, [1977] 1 All ER 64, CA (legal representation unnecessary to fair hearing because provision for representation by an experienced police officer sufficient); *Fraser v Mudge* [1975] 3 All ER 78, [1975] 1 WLR 1132, CA. See further *Pett v Greyhound Racing Association Ltd (No 2)* [1970] 1 QB 46, [1969] 2 All ER 221 (settled on appeal [1970] 1 QB 67n, [1970] 1 All ER 243n). As to the actual decision not to permit legal representation in that case contrast *Pett v Greyhound Racing Association Ltd* [1969] 1 QB 125, [1968] 2 All ER 545, CA, and *Enderby Town Football Club Ltd v Football Association Ltd* [1971] Ch 591, [1971] 1 All ER 215, CA, per Lord Denning MR.

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(B) PARTICULAR COURTS AND TRIBUNALS

1111. The High Court of Parliament.

The House of Commons together with the House of Lords and the Sovereign form the High Court of Parliament which, though not a judicial body in the accepted sense, is a court in respect of which barristers have rights of audience¹. Counsel may be heard on behalf of persons whose conduct is the subject of select committee investigations or whose rights and interests, as distinct from the general interests of the country, are directly affected by a public Bill or other matter which has been referred to the consideration of such a committee². Counsel may also be heard before committees on opposed private Bills³, but will not be heard in connection with unopposed private Bills⁴.

1 See **COURTS** vol 10 (Reissue) PARAS 301, 351 et seq. As to the rights of audience of barristers before courts see PARA 1109.

2 Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 763.

3 See under the Statutory Orders (Special Procedure) Act 1945 s 3: see **PARLIAMENT** vol 34 (Reissue) PARAS 917-918.

4 Erskine May's Parliamentary Practice (23rd Edn, 2004) p 1033 et seq.

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1112. Appeals to the House of Lords.

On appeals to the House of Lords sitting as an appellate court¹, the lodgment of a case² carries the right to be heard by two counsel, one of whom may be leading counsel³. Where a petition for leave to appeal is referred for an oral hearing before the House of Lords Appeal Committee, one counsel may appear on each side⁴.

1 As to the appellate jurisdiction of the House of Lords see **COURTS** vol 10 (Reissue) PARA 359 et seq.

2 A case is a statement of a party's argument in the appeal: *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals* (October 2007), Direction 15.1; *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (October 2007), Direction 16.1.

3 *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals* (October 2007), Direction 15.8; *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (October 2007), Direction 16.9. In the case of Scottish and Northern Irish appeals, Scottish advocates and members of the Bar of Northern Ireland may be heard: see *A-G v Lord Advocate* (1834) 2 Cl & Fin 481 per Lord Brougham LC; Macqueen's Practice of the House of Lords and Privy Council (1842) 203. As to the right of a party to appear in person see *Tritonia Ltd v Equity and Law Life Assurance Society* [1943] AC 584, [1943] 2 All ER 401, HL (the party himself may appear only when a natural person and not a corporation); *Engineers' and Managers' Association v Advisory, Conciliation and Arbitration Service (No 2)* [1980] 1 All ER 896, [1980] 1 WLR 302, HL (where a trade union was permitted to appear by its deputy general secretary). As to the obligation of barristers engaged in appeals before the Appellate Committee of the House of Lords to attend the House in priority to other courts, save in cases of absolute necessity, see *Vacher & Sons Ltd v London Society of Compositors* [1913] AC 107, HL, per Lord Haldane; *Abram Steamship Co v Westville Shipping Co* (1923) 67 Sol Jo 535, HL.

4 *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals* (October 2007), Direction 4.19; *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (October 2007), Direction 5.19. At such a hearing, parties may also be heard by agent or in person: *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals* (October 2007), Direction 4.19; *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (October 2007), Direction 5.19.

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1113. Barristers who are members of the legislature.

A barrister who is a member of the House of Commons is not by virtue of that membership prevented from appearing in any judicial case before the House of Lords, but he may not appear as an advocate before that House or any parliamentary committee nor (save in very exceptional cases with leave of the House) act as counsel in connection with any bill before the House of Lords¹. A barrister who is also a peer may appear as an advocate on an appeal to the House of Lords, but may not appear before a committee of the House of Lords or before the House when sitting under the Presidency of the Lord High Steward in a criminal case².

1 Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 136-137. As well as being contrary to the usage of Parliament, such conduct would also constitute a breach of the rules of professional conduct of the Bar: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(d); and PARA 1186. As to the Code of Conduct see PARA 1150. As to barristers who are members of either House discussing in Parliament matters in which they have been professionally concerned, and as to the relationship between these matters and the 'advocacy rule' which was introduced in 1995 to prevent members speaking for outside interests in return for payment, see Erskine May's Parliamentary Practice (23rd Edn, 2004) pp 486-487.

2 *Re Lord Kinross* [1905] AC 468, HL.

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1114. Privy Council.

English and Northern Irish barristers, Scottish advocates and duly qualified members of the Bar in countries from which appeals to the Queen in Council lie have a right of audience before the Judicial Committee of the Privy Council¹. Barristers who are Privy Councillors but not members of the Judicial Committee may appear before the Committee².

1 See Annual Statement 1900-1 p 12. As to the Judicial Committee and its jurisdiction see **COURTS** vol 10 (Reissue) PARA 401 et seq. The Privy Council is common ground to the English and other Commonwealth Bars, and an English QC may take a junior brief with a Commonwealth QC as leader: per Sir Henry James A-G, cited in (1884) 19 L Jo 596. A Solicitor General of the United States has been called to the Bar to enable him to appear before the Privy Council: see (1923) 58 L Jo 165, 177.

2 *Re Lord Kinross* [1905] AC 468, HL.

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1115. Commissions and disciplinary proceedings.

There is normally no right for anyone to appear before a royal commission except for the persons summoned, but counsel are often allowed to present, examine and cross-examine witnesses by leave of the commissioners¹. The Charity Commissioners will occasionally hear counsel².

Barristers are entitled to appear before both barristers' and solicitors' disciplinary tribunals³. There is also a statutory right to be represented by a barrister in various other disciplinary proceedings, including those before:

- 1665 (1) the Disciplinary Committee of the Royal College of Veterinary Surgeons⁴;
- 1666 (2) a fitness to practise committee of the Pharmaceutical Society of Great Britain⁵;
- 1667 (3) a fitness to practise committee of the General Dental Council⁶;
- 1668 (4) a fitness to practise committee of the General Optical Council⁷;
- 1669 (5) a fitness to practise committee of the General Medical Council⁸;
- 1670 (6) the Disciplinary Committee of the Hearing Aid Council⁹;
- 1671 (7) the Conduct and Competence Committee of the Nursing and Midwifery Council¹⁰;
- 1672 (8) the Health Committee and the Professional Conduct Committee of the General Osteopathic Council¹¹;
- 1673 (9) the Investigating Committee, the Professional Conduct Committee and the Health Committee of the General Chiropractic Council¹²;
- 1674 (10) the Disciplinary Committee of the Farriers Registration Council¹³;
- 1675 (11) the Professional Conduct Committee of the Architects Registration Board¹⁴;
- 1676 (12) the Financial Services and Markets Tribunal¹⁵;
- 1677 (13) tribunals required to determine why an order should not be made prohibiting a person from doing estate agency work, and appeals therefrom¹⁶; and
- 1678 (14) certain tribunals hearing charges of disciplinary offences alleged to have been committed by police officers, and appeals to police appeals tribunals¹⁷.

In the absence of statutory provision, whether barristers may appear at disciplinary proceedings will normally depend on whether fairness and natural justice entitle the person against whom charges have been made to be legally represented¹⁸.

¹ See eg the Parliamentary Commissioner Act 1967 s 7(2); and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 44.

² See *Benthall v Earl of Kilmorey* (1884) Tudor's Charitable Trusts (5th Edn) 582; *Re Hackney Charities, ex p Nicholls* (1864) 34 LJ Ch 169 at 175 per Lord Romilly MR; and **CHARITIES** vol 8 (2010) PARA 543.

³ As to rights of audience before barristers' disciplinary tribunals see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (Disciplinary Tribunals Regulations) reg 7(2)(a); and as to proceedings before such tribunals see PARAS 1269-1280. As to the Code of Conduct see PARA 1150. As to solicitors' disciplinary tribunals see the Solicitors (Disciplinary Proceedings) Rules 2007, SI 2007/3588; and PARA 906.

- 4 See the Veterinary Surgeons Act 1966 s 15(3), Sch 2 para 5(1)(c); the Veterinary Surgeons and Veterinary Practitioners (Disciplinary Committee) (Procedure and Evidence) Rules Order of Council 2004, SI 2004/1680, Schedule r 24.1; and **ANIMALS** vol 1 (2008) PARA 957.
- 5 See the Pharmacists and Pharmacy Technicians Order 2007, SI 2007/289, art 59(2)(c); and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 928.
- 6 See the General Dental Council (Fitness to Practise) Rules Order of Council 2006, SI 2006/1663, Schedule r 52; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 467.
- 7 See the General Optical Council (Fitness to Practise Rules) Order of Council 2005, SI 2005/1475, Schedule r 20; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 860.
- 8 See the General Medical Council (Fitness to Practise) Rules Order of Council 2004, SI 2004/2608, Schedule r 33; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 169.
- 9 See the Hearing Aid Council Investigating and Disciplinary Committee Rules Approval Instrument 1991, SI 1991/2770, Schedule Pt VI r 16; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 877.
- 10 See the Nursing and Midwifery (Fitness to Practise) Rules 2004 Order of Council 2004, SI 2004/1761, Schedule r 20; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARA 775.
- 11 See the General Osteopathic Council (Health Committee) (Procedure) Rules Order of Council 2000, SI 2000/242, Schedule r 40; the General Osteopathic Council (Professional Conduct Committee) (Procedure) Rules Order of Council 2000, SI 2000/241, Schedule r 60; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 557, 570.
- 12 See the General Chiropractic Council (Investigating Committee) Rules Order of Council 2000, SI 2000/2916, Schedule rr 5(1)(c), 7(4); the General Chiropractic Council (Professional Conduct Committee) Rules Order of Council 2000, SI 2000/3290, Schedule r 11; the General Chiropractic Council (Health Committee) Rules Order of Council 2000, SI 2000/3291, Schedule r 11; and **MEDICAL PROFESSIONS** vol 30(1) (Reissue) PARAS 631, 647, 657, 667.
- 13 See the Farriers Registration Council Disciplinary Committee (Procedure) Rules Approval Instrument 1976, SI 1976/700, Schedule r 16; and **ANIMALS** vol 2 (2008) PARA 863.
- 14 See the Architects Act 1997 s 14(5); and **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 239.
- 15 See the Financial Services and Markets Tribunal Rules 2001, SI 2001/2476, r 18; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 62.
- 16 See the Estate Agents Act 1979 s 5(1), Sch 2 para 4(1); the Estate Agents (Appeals) Regulations 1981, SI 1981/1518, reg 14(2)(a); and **AGENCY** vol 1 (2008) PARA 275.
- 17 See the Police Act 1996 s 84(2); the Police (Conduct) Regulations 2004, SI 2004/645, regs 17, 18, 23-25, 41; and **POLICE** vol 36(1) (2007 Reissue) PARAS 247, 260.
- 18 See PARA 1110. As to a person's right to be represented in disciplinary proceedings, and the necessity for compliance with the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmnd 8969) art 6(1), see *Campbell v United Kingdom* (1984) 7 EHRR 165; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134 et seq. As to the relation between the Convention for the Protection of Human Rights and Fundamental Freedoms and the common law in this respect see *R v Board of Visitors of HM Prison, The Maze, ex p Hone* [1988] AC 379, [1988] 1 All ER 321, HL.

UPDATE

1115 Commissions and disciplinary proceedings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 16--SI 1981/1518 revoked: SI 2009/1836.

NOTE 17--SI 2004/645 replaced: Police (Conduct) Regulations 2008, SI 2008/2864. See reg 7.

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1116. Arbitrations.

There is no statutory provision concerning whether barristers have a right of audience before arbitrators. Such matters are in the first place for the choice of the parties to the arbitration, pursuant to the principle that they should be free to agree how their disputes are resolved subject only to such safeguards as are necessary in the public interest¹. In the absence of any agreement between the parties governing the matter, it is for the arbitration tribunal to decide what representation to allow.

The legislation governing the settlement of international investment disputes² recognises that parties to such disputes may be represented by counsel³.

1 See the Arbitration Act 1996 s 1(b); and **ARBITRATION** vol 2 (2008) PARA 1210. Although the provisions governing the procedure of the Central Arbitration Committee expressly exclude the relevant provisions of the Arbitration Act 1996 (see the Trade Union and Labour Relations (Consolidation) Act 1992 s 263(6) (amended by the Arbitration Act 1996 s 107(1), Sch 3 para 56)), that Committee is empowered to determine its own procedure (see the Trade Union and Labour Relations (Consolidation) Act 1992 s 263(5)), and no provision is made as to rights of audience. See further **EMPLOYMENT**.

2 See the Arbitration (International Investment Disputes) Act 1966, which sets out the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, 18 March 1965; Cmnd 3255).

3 See the Arbitration (International Investment Disputes) Act 1966, Schedule; and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington, 18 March 1965; Cmnd 3255), art 22.

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(C) EXERCISING RIGHTS OF AUDIENCE

1117. Duties of barristers exercising rights of audience.

When exercising a right of audience¹ a barrister owes a duty to the court to act with independence in the interests of justice, and to comply with the code of conduct of the bar².

1 As to rights of audience, see PARAS 497, 512 text and note 3.

2 See the Courts and Legal Services Act 1990 s 27(2A) (prospectively repealed by the Legal Service Act 2007 Sch 21 paras 83, 84(a), Sch 23); and PARA 497. This duty is restated in the Legal Services Act 2007 s 188 (not yet in force): see PARA 513.

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1118. Appearance in person.

There are some applications in the High Court which, if made in open court, may be made only by counsel, in particular, relator actions brought in the name of the Attorney General¹, and applications to strike a solicitor off the rolls². An application for a writ of habeas corpus should normally be made by counsel or by a solicitor but may be made in person in urgent cases³.

In criminal proceedings in the Crown Court prosecutions must be conducted by counsel, who, when acting in this capacity, are said to be in the nature of public officers⁴.

A barrister who is a party in a case must elect either to conduct his own case or to have it conducted by counsel⁵; if he appears on his own account, he cannot claim the rights of counsel but will be accorded only those rights enjoyed by a member of the public⁶.

When not engaged in a case, a barrister has no higher right to be present in court than a member of the general public⁷.

¹ *A-G v Barker* (1838) 4 My & Cr 262. See further **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) PARA 116.

² See *Re Solicitors, ex p Peasegood* [1994] 1 All ER 298; and PARA 919. Although the jurisdiction of the High Court to strike a solicitor off the rolls is preserved by the Solicitors Act 1974 s 50(2), such proceedings would now normally take place under the parallel jurisdiction of the Solicitors' Disciplinary Tribunal: see s 47(1); and PARA 907 et seq.

³ See *Re Greene* (1941) 57 TLR 533; *Re Wring, Re Cook* [1960] 1 All ER 536n, [1960] 1 WLR 138; *Re Newton* (1855) 16 CB 97; *Re Hunt* [1959] 1 QB 378, [1959] 1 All ER 73, DC; and **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 231.

⁴ *R v George Maxwell (Developments) Ltd* [1980] 2 All ER 99. See also *R v Lancashire Justices* (1819) 1 Chit 602; *R v Brice* (1819) 2 B & Ald 606; *R v Milne* (1804) 2 B & Ald 606n; *R v Stoddart* (1819) Dickinson's Practical Guide to Quarter Sessions (6th Edn) 152; *R v Gurney* (1869) 11 Cox CC 414. It is also generally undesirable for a prosecutor to appear without legal representation in the magistrates' court: see *Simms v Moore* [1970] 2 QB 327, [1970] 3 All ER 1, DC.

⁵ *Newton v Chaplin* (1850) 10 CB 356 (barrister who is a party to a cause is not allowed to address the court when represented by counsel); *New Brunswick and Canada Rly and Land Co v Conybeare* (1862) 9 HL Cas 711 (barrister must elect).

⁶ *Practice Note* [1961] 1 All ER 319, [1961] 1 WLR 257, DC (barrister appearing on his own behalf should not appear robed or sit in counsel's row); but see *Neate v Denman* (1874) LR 18 Eq 127 (where a barrister appearing in person was allowed to appear robed when the question raised by the case was on behalf of the profession). A barrister appearing on his own behalf is entitled to remuneration for work done in his own defence: see *Khan v Lord Chancellor* [2003] EWHC 12 (QB), [2003] 2 All ER 367, [2003] 1 WLR 2385; and PARAS 1296, 1313.

⁷ Annual Statement 1925 p 8. For the same reason, where a barrister waiting in court for a case to come on forms the opinion that a defendant whose case is being heard but is not represented is likely to be prejudiced by some improper procedure adopted by the court, the barrister has no right or duty to intervene, because he has no right of audience: Annual Statement 1971-72 p 36. It is not contrary to etiquette, however, for a barrister to attend a court without being instructed in any case before the court and there is no objection to the barrister doing so in robes: Annual Statement 1897-98 p 9. As to rights of audience see PARA 1109 et seq.

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1119. Precedence of counsel.

There are certain rules governing the precedence of barristers when appearing in court. These rules are a matter of the discretion of the bench and of the etiquette of the profession¹.

The Attorney General takes precedence over all other barristers in the Supreme Court². Next in order of precedence is the Solicitor General, and then come other Queen's Counsel, who rank amongst themselves according to the date of their patents³. Last come junior barristers, whose precedence amongst themselves is determined by the dates of their call to the Bar⁴.

When two or more barristers are briefed together on the same side, the leader has the conduct of the case and the court will not generally allow a junior barrister to pursue a different argument from that taken by the leader⁵.

1 *A-G for Dominion of Canada v A-G for Province of Ontario* [1898] AC 247 at 252, HL.

2 *A-G v Lord Advocate* (1834) 2 Cl & Fin 481, HL. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

3 *A-G for Dominion of Canada v A-G for Province of Ontario* [1898] AC 247 at 252, HL. The Attorney General and Solicitor General, on relinquishing office, revert to the position of precedence conferred upon them by the patent which appointed them Queen's Counsel: Annual Statement 1931 p 9. As to Queen's Counsel see PARA 1124.

4 At every call to the Bar (see PARAS 1075-1078) students who are called on the same day rank in the following order: (1) students who hold certificates of honour rank in seniority over all other students called on the same day and inter se in order of seniority as students; (2) students who have been awarded Scarman scholarships rank in seniority over students called on the same day who have not been awarded such scholarships or certificates of honour and inter se in order of seniority as scholars, earlier scholarships being deemed to confer seniority over later scholarships and scholarships awarded in the same year being deemed to confer seniority in order of merit; and (3) other students rank in order of their seniority as students: Consolidated Regulations (2007) reg 25; and see also *Abbott & Peake's Case* (1796) 6 C & P 637n. As to the Consolidated Regulations see PARA 1060.

5 *Pickering v Dowson* (1813) 4 Taunt 779.

UPDATE

1119 Precedence of counsel

NOTE 2--Appointed day is 1 October 2009: SI 2009/1604.

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B. FOREIGN AND INTERNATIONAL COURTS

1120. Foreign courts generally.

Whether a barrister will be permitted to present a case before a foreign court will normally depend on whether the court in question will allow a right of audience to members of the English Bar¹.

¹ As to the rules of professional conduct governing overseas practice of members of the English Bar see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe A (International Practice Rules); and PARAS 534, and 1163-1164. As to the Code of Conduct see PARA 1150.

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1121. European Court of Justice and Court of First Instance.

Parties directly participating in litigation before the European Court of Justice or the Court of First Instance¹ must be represented².

Member states, states which are parties to the EEA Agreement, EC institutions and the EFTA Surveillance Authority are represented by an agent, who may be assisted by an adviser or by a lawyer authorised to practise before a court of a member state or of another state which is a party to the EEA Agreement or by a university teacher who is a national of a member state whose law affords him rights of audience³. Other parties must be represented by a lawyer authorised to practise before a court of a member state or of another state which is a party to the EEA Agreement or by a university teacher who is a national of a member state whose law affords him rights of audience⁴, who must sign every pleading⁵.

Accordingly, barristers are entitled to represent parties before the courts⁶; the right of audience is not restricted to barristers, however, but also includes solicitors⁷.

Before a lawyer assisting an agent or representing a party may practise before either court, he must submit credentials to the registrar of the court certifying that he is appropriately qualified⁸; credentials normally take the form of a certificate from the appropriate professional body of which the lawyer is a member.

Agents, advisers and lawyers appearing before the court enjoy the rights and immunities necessary to the independent exercise of their duties⁹. An adviser or lawyer whose conduct before the court is incompatible with the dignity of the court or who abuses the rights and immunities which he has been granted may be excluded from the proceedings¹⁰.

1 The official names of the courts are the Court of Justice of the European Communities and the Court of First Instance of the European Communities. Rules similar to those applied in those courts apply in the EFTA Court (ie the court established by the Agreement on the European Economic Area (Oporto, 2 May 1992; Cm 2073 (OJ L1, 3.1.94, p 3)) as adjusted by the Protocol (Brussels, 17 March 1993; Cm 2183 (OJ L1, 3.1.94, p 572)) art 108.

2 See the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) (Protocol on the Statute of the Court of Justice) arts 19, 53. There is no provision for the parties to appear in person without legal representation or assistance; the parties may only address the court through their agent, adviser or lawyer: Rules of Procedure of the Court of Justice of the European Communities art 58; Rules of Procedure of the Court of First Instance of the European Communities art 59. There is no exception to this rule for parties who are themselves lawyers authorised to practise before the courts of a member state: see Case C-126/90P *Viciano v EC Commission* [1991] ECR I-781, ECJ; Case C-174/96P *Lopes v European Court of Justice* [1996] ECR I-6401, ECJ; Case T-79/99 *Euro-Lex European Law Expertise GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* [1999] ECR II-3555, CFI. An application for legal aid need not be made though a lawyer: Rules of Procedure of the Court of Justice of the European Communities art 76(2); Rules of Procedure of the Court of First Instance of the European Communities art 95(1). In certain references to the Court of Justice, the Court takes into account, as regards the representation and attendance of the parties, the rules of procedure of the national court which made the reference: Rules of Procedure of the Court of Justice of the European Communities art 104(2). In such cases, the Court will allow parties to appear without legal representation if they would be permitted to do so before the national court or tribunal which made the reference: see eg Case C-168/91 *Konstantinidis v Stadt Altensteig-Standesamt* [1993] ECR I-1191, [1993] 3 CMLR 401, ECJ; Case C-19/92 *Kraus v Land Baden-Württemberg* [1993] ECR I-1663, ECJ.

3 Statute of the Court of Justice arts 19, 53.

4 Statute of the Court of Justice arts 19, 53.

5 Rules of Procedure of the Court of Justice of the European Communities art 37(1); Rules of Procedure of the Court of First Instance of the European Communities art 43(1).

6 Barristers are not confined to representing British nationals. Although it is usual for parties to be represented by lawyers of their own nationality, this is not obligatory: see eg Case 19/62 *Fédération Nationale de la Boucherie en Gros et du Commerce en Gros des Viandes v Council of EEC* [1962] ECR 491, [1963] CMLR 160, ECJ (where a French lawyer appeared for a Dutch party); Joined Cases C-89, 104, 114, 116, 117, 125-129/85 *Åhlström Osakeyhtiö v EC Commission* [1988] ECR 5193, ECJ (where English barristers appeared for United States and Canadian parties).

7 See eg Case 175/80 *Tither v EC Commission* [1981] ECR 2345, ECJ (where the applicant in a direct action was represented only by an English solicitor; no objection was taken by the court). Where the European Court of Justice takes into account, as regards the representation and attendance of the parties, the rules of procedure of the national court which made the reference (see note 2), it has been suggested that only those who would be entitled to address the national court should be entitled to address the European Court of Justice; however, there are examples of parties to references from the English High Court being represented before the European Court of Justice by lawyers who did not have rights of audience before the English High Court: see eg Case 234/81 *El Du Pont de Nemours Inc v Customs and Excise Comrs* [1982] ECR 3515, ECJ (Scottish advocate); Case C-324/93 *R v Secretary of State for the Home Department, ex p Evans Medical Ltd* [1995] ECR I-563, ECJ (English solicitors).

8 Rules of Procedure of the Court of Justice of the European Communities art 38(3); Rules of Procedure of the Court of First Instance of the European Communities art 44(3). As a matter of law, whether a person is qualified to appear before the European Court of Justice is a matter for the court to decide by applying the law of the place where that person claims to be entitled to practise as a lawyer: see *Nold KG v High Authority* (1957) 2 Valentin 245, ECJ.

9 Statute of the Court of Justice arts 19, 53. The rights and immunities accorded to those appearing before the court are: (1) immunity in respect of words spoken or written by them concerning the case or the parties; (2) freedom from search or seizure of papers relating to proceedings; (3) freedom of movement and the allocation of such foreign currency as may be necessary for the performance of their duties: Rules of Procedure of the Court of Justice of the European Communities art 32; Rules of Procedure of the Court of First Instance of the European Communities art 38. To be accorded these rights and immunities an agent must have an official certificate issued by the state or institution he represents and an adviser and lawyers must have credentials signed by the registrar of the court: Rules of Procedure of the Court of Justice of the European Communities art 33; Rules of Procedure of the Court of First Instance of the European Communities art 39.

10 See the Rules of Procedure of the Court of Justice of the European Communities art 35; and the Rules of Procedure of the Court of First Instance of the European Communities art 41. The Advocate General must be heard, and the person concerned given the opportunity to reply to the complaint, before an order barring that person is made: Rules of Procedure of the Court of Justice of the European Communities art 35; Rules of Procedure of the Court of First Instance of the European Communities art 41.

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1122. European Court of Human Rights.

Contracting parties before the European Court of Human Rights¹ must be represented by agents, who may have the assistance of advocates or advisers, including barristers². Persons, non-governmental organisations or groups of individuals may initially present applications³ themselves or through a representative⁴. Following notification of the application to the respondent contracting party, the President of the Chamber of the Court may direct that the applicant should be represented⁵; and the applicant must be represented at any hearing, unless the President of the Chamber exceptionally grants leave to the applicant to present his own case, subject, if necessary, to being assisted by an advocate or other approved representative⁶. The representative of an applicant must be either an advocate authorised to practise in any of the contracting states and resident in the territory of one of them, or any other person approved by the President of the Chamber⁷. Where an applicant is represented, the representative must supply a power of attorney or written authority to act⁸. In exceptional circumstances and at any stage of the procedure, the President of the Chamber may, where he considers that the circumstances or the conduct of the advocate or other representative so warrant, direct that the advocate or other representative may no longer represent or assist the applicant⁹.

1 As to the European Court of Human Rights see the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) Section II; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 179-200.

2 European Court of Human Rights: Rules of Court (2006) r 35.

3 See under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 34: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

4 European Court of Human Rights: Rules of Court (2006) r 36.1.

5 European Court of Human Rights: Rules of Court (2006) r 36.2.

6 European Court of Human Rights: Rules of Court (2006) r 36.3.

7 European Court of Human Rights: Rules of Court (2006) r 36.4(a). The advocate or other approved representative must have an adequate knowledge of one of the court's official languages: rr 34.1, 36.5(a). The President of the Chamber may, however, give leave to use another language if the advocate or other representative does not have sufficient proficiency to express himself in English or French: r 36.5(b).

8 European Court of Human Rights: Rules of Court (2006) r 45.3.

9 European Court of Human Rights: Rules of Court (2006) r 36.4(b).

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International Court of Justice.

1123. International Court of Justice.

Parties¹ to proceedings before the International Court of Justice² must be represented by agents, who may be assisted by counsel or advocates, all of whom enjoy such privileges and immunities as are necessary to the independent exercise of their duties³.

1 Only states may be parties to proceedings before the International Court of Justice: Statute of the International Court of Justice (San Francisco, 26 June 1945; TS 67 (1946); Cmnd 7015) art 34 para 1.

2 As to the International Court of Justice see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARA 499 et seq.

3 See the Statute of the International Court of Justice art 42.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(ii) Eligibility for Offices and Appointments/1124. Queen's Counsel.

(ii) Eligibility for Offices and Appointments

1124. Queen's Counsel.

The only degree in the common law is the degree of barrister, conferred by the Inns of Court¹. There are, however, numerous offices which a barrister may fill and some which may be held only by barristers². That of greatest significance within the practising Bar is the office of Queen's Counsel³. Queen's Counsel are appointed by the Crown on the advice of the Secretary of State⁴. They wear silk gowns⁵, and are also called leading counsel, silks or leaders⁶.

Appointment as Queen's Counsel is a mark and recognition by the Crown of the professional eminence of the barrister concerned⁷. It also confers a right of precedence over junior barristers, and affects the instructions which a barrister is obliged to accept; in particular, a Queen's Counsel is not obliged to accept instructions to settle alone any document of a kind generally settled only by or in conjunction with a junior barrister, or to act without a junior if he considers that the interests of the lay client require that a junior should also be instructed⁸.

1 See PARA 1033. As to call to the Bar see PARAS 1075-1078.

2 See PARA 1126 et seq.

3 As to the origin of the office of Queen's Counsel see PARA 1039.

4 A person who applies to be recommended for appointment as Queen's Counsel in England and Wales must pay a fee, the amount of which is specified by order: Access to Justice Act 1999 s 45(1), (2) (amended by SI 2003/1887; prospectively amended by the Legal Services Act 2007 s 208(1), Sch 21 paras 127, 130). Orders are made by statutory instrument which are subject to annulment in pursuance of a resolution of either House of Parliament: Access to Justice Act 1999 s 45(3). At the date at which this volume states the law, the prescribed fee is £720: see the Appointment of Queen's Counsel (Fees) Order 2002, SI 2002/2037, art 2. In determining the amount of the fee regard must be had to the expenses incurred in considering applications for appointment as Queen's Counsel: Access to Justice Act 1999 s 45(2) (as so amended; and prospectively amended). None of these provisions affects the Great Seal (Offices) Act 1874 s 9 (under which fees are charged in respect of the grant of Letters Patent under the Great Seal for appointment as Queen's Counsel: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 922): Access to Justice Act 1999 s 45(4).

As from a day to be appointed the Lord Chancellor assumes the functions of the Secretary of State described above: Access to Justice Act 1999 s 45 (prospectively amended by the Legal Services Act 2007 s 208(1), Sch 21 paras 127, 130).

In practice applications are considered by an independent selection panel comprising a retired senior judge, senior barristers, senior solicitors and lay members. The panel passes its recommendations to the Secretary of State (as from a day to be appointed, the Lord Chancellor) who then passes them to the Crown for the issue of letters patent. The question of the appointment of honorary QC's (recognising lawyers who have made a major contribution to the law of England and Wales outside practice) is a matter for the Secretary of State (or Lord Chancellor). For a description of the application process see *The Bar Handbook 2008* Pt IX.

5 As to barristers' robes see PARA 1215.

6 All other barristers who are not Queen's Counsel, and who wear stuff gowns and sit outside the Bar in court, are called junior counsel or juniors (the term 'stuff gownsmen' to describe junior counsel having fallen into disuse).

7 'The position occupied by Queen's Counsel is in the nature of an office under the Crown, although any duties which it entails are almost as unsubstantial as its emoluments; and it is also in the nature of an honour or dignity to this extent, that it is a mark and recognition by the Sovereign of the professional eminence of the counsel': *A-G for Dominion of Canada v A-G for Province of Ontario* [1898] AC 247 at 252, HL, per Lord Watson.

8 See PARA 1191.

UPDATE

1124 Queen's Counsel

NOTE 4--Day appointed is 1 January 2010: SI 2009/3250.

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1125. Administration of oaths.

Until a day to be appointed every barrister has the power conferred by statute on a commissioner for oaths¹, and the right to use the title 'commissioner for oaths'².

As from a day to be appointed³ the administration of oaths is a reserved legal activity for the purposes of the Legal Services Act 2007⁴ and a person may be authorised to carry on such activities by the Bar Standards Board⁵. During the transitional period⁶ every barrister holding a current practising certificate⁷ is deemed to be authorised by the Board to carry on the administration of oaths⁸.

1 See the Courts and Legal Services Act 1990 s 113(3) (prospectively repealed); and PARA 577.

2 See the Courts and Legal Services Act 1990 s 113(10)(b) (prospectively repealed); and PARA 577.

3 The Legal Services Act 2007 ss 12, 13, Sch 5 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

4 See the Legal Services Act 2007 s 12; and PARA 512.

5 See the Legal Services Act 2007 s 13(2)(a), Sch 5 para 1; and PARA 515. The Legal Services Act 2007 refers to the General Council of the Bar (see PARA 1042 note 1). However the body responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 As to the meaning of 'transitional period' see PARA 516 note 9.

7 Legal Services Act 2007 Sch 5 para 4(4).

8 Legal Services Act 2007 Sch 5 para 4(1), (2)(d). This is subject to the regulatory arrangements of the Board: Sch 5 para 4(3). During the transitional period every registered European lawyer is also deemed to be authorised to carry on such an activity: see Sch 5 para 5.

UPDATE

1125 Administration of oaths

TEXT AND NOTES--Day appointed for purpose of these provisions is 1 January 2010: SI 2009/3250.

Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(ii) Eligibility for Offices and Appointments/1126. Judicial offices, appointments, tribunals and committees.

1126. Judicial offices, appointments, tribunals and committees.

A barrister (provided, in many cases, that he has been qualified for a specified number of years) is eligible for appointment to many judicial and quasi-judicial offices¹. Barristers are also eligible to be appointed, and in some cases are required to be appointed, to the panel of, or as the chairmen of, or as legal assessors to, various tribunals and committees constituted under statute. The constitutions of the bodies concerned make specific provision as to the relevant eligibility requirements².

The holders of many of these offices are prohibited by statute from providing advocacy or litigation services or practising as a barrister³.

1 The relevant periods of qualification are defined by reference to the length of time that the person concerned has had a right of audience in relation to specified proceedings: see the Courts and Legal Services Act 1990 s 71; and PARA 742. As to the rights of audience acquired by barristers upon being called to the Bar see PARA 1109. A barrister holds a relevant qualification for the purposes of the judicial appointment eligibility condition under the Tribunals, Courts and Enforcement Act 2007: see s 50; and **COURTS**.

2 As to the meaning of 'advocacy services' see PARA 1164 note 5. As to the meaning of 'litigation services' see PARA 1162 note 8.

3 See PARA 1128.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(ii) Eligibility for Offices and Appointments/1127. Ecclesiastical offices.

1127. Ecclesiastical offices.

A barrister is qualified, provided he is of the requisite number of years' standing, to be appointed Chancellor of a diocese¹ or Dean of the Arches and Auditor².

1 See the Ecclesiastical Jurisdiction Measure 1963 s 2(1); and **ECCLESIASTICAL LAW**. The Chancellor of a diocese presides over the consistory court of a diocese: see s 2(1).

2 See the Ecclesiastical Jurisdiction Measure s 3(3); and **ECCLESIASTICAL LAW**. The Dean of the Arches and Auditor is the senior judge of the Arches Court of Canterbury and the Chancery Court of York: see s 3(2)(a); and **ECCLESIASTICAL LAW**.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(ii) Eligibility for Offices and Appointments/1128. Restrictions on practice.

1128. Restrictions on practice.

A barrister who holds certain judicial offices, or who is a member or chairman of a relevant tribunal¹ may not provide advocacy or litigation services², or practise as a barrister³.

The Attorney General and Solicitor General may not undertake any business on behalf of private clients⁴. Even where a barrister is not prohibited from practising, it is a rule of professional conduct that a barrister may not accept instructions⁵ in any case where by reason of his connection with the court⁶ the impartial administration of justice might appear to be prejudiced⁷.

1 See the Courts and Legal Services Act Sch 11; and PARA 582 note 1.

2 Courts and Legal Services Act 1990 s 75(a). As to the meaning of 'advocacy services' see PARA 1164 note 5. As to the meaning of 'litigation services' see PARA 1162 note 8.

3 Courts and Legal Services Act 1990 s 75(c). As to what constitutes practice as a barrister see PARA 1152 et seq.

4 Treasury Minute dated 5 July 1895 s 3.

5 As to the meaning of 'instructions' see PARA 1164 note 4.

6 As to the meaning of 'court' see PARA 1158 note 3.

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(d); and PARA 1186. As to the Code of Conduct see PARA 1150.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(iii) Drafting of Documents and Giving of Advice/1129. Right to draft documents.

(iii) Drafting of Documents and Giving of Advice

1129. Right to draft documents.

Barristers are among the categories of person¹ who are entitled, in expectation of fee, gain or reward², directly or indirectly to draw or prepare³ relevant legal documents⁴. As from a day to be appointed such drafting is a reserved instrument activity, and therefore a reserved legal activity for the purposes of the Legal Services Act 2007⁵.

1 For the other categories of persons entitled to draft documents for reward see PARA 595.

2 It is not necessary for these purposes that the person who draws or prepares the instrument in question should be the person who receives the fee, gain or reward: *Reynolds v Hoyle* [1975] 3 All ER 934, [1975] 1 WLR 207, CA. Furthermore, there need be no legal right to recover, but merely an expectation that some reward will be forthcoming as a result of the action taken: *Pacey v Atkinson* [1950] 1 KB 539 at 543, [1950] 1 All ER 320 at 322, DC, per Lord Goddard CJ.

3 The concept of 'draws or prepares' involves the use of the intellect to compose the relevant instrument by the selection of the correct words and to place them in the right sequence so that the instrument expresses the intention of the parties: see *Green v Hoyle* [1976] 2 All ER 633, [1976] 1 WLR 575, CA.

4 See the Solicitors Act 1974 ss 22, 23 (prospectively repealed by the Legal Services Act 2007 ss 177, 210, Sch 16 Pt 1 paras 1, 26(a), Sch 23); and PARA 595. At the date at which this volume states the law no such day had been appointed.

5 See the Legal Services Act 2007 s 12, Sch 2; and PARA 512.

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1130. Law reports.

A barrister is entitled to authenticate by his name a report of a case decided in any of the superior courts¹.

¹ A report so authorised and published may be cited as an authority before any tribunal: see 171 HL Official Report (3rd series), col 778 per Lord Westbury LC; *West Derby Union Guardians v Atcham Union Guardians* (1889), as reported in 6 TLR 5, CA per Lord Esher MR; *Birtwistle v Tweedale* [1953] 2 All ER 1598n, [1954] 1 WLR 190, CA. Reports by solicitors and other persons having a right of audience in relation to all proceedings in the Supreme Court have the same authority as those made by barristers: see the Courts and Legal Services Act 1990 s 115; and **CIVIL PROCEDURE** vol 11 (2009) PARA 106. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

UPDATE

1130 Law reports

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(iii) Drafting of Documents and Giving of Advice/1131. Documents requiring counsel's signature.

1131. Documents requiring counsel's signature.

On appeals to the House of Lords the statement of facts and the cases of the parties must be signed by one or more counsel who have attended as counsel in the court below or will be briefed for the hearing before the House¹. In the Judicial Committee of the Privy Council a petition for special leave to appeal must be signed by the counsel who attends the hearing²; and the printed cases required for the appeal must be signed by at least one counsel who attends at the hearing of the appeal, or by the party himself if he conducts his appeal in person³.

Where a statement of case or skeleton argument has been settled by counsel, it is customary for counsel's (typed) signature to appear at the end. Historically, to sign counsel's name to a statement of case without his authority is a contempt of court⁴.

1 *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals* (October 2007) Directions 11.1, 11.2(h), 15.7, Standing Order (Judicial Business) No VI(3); *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (October 2007) Directions 12.1, 12.3(h), 16.8, Standing Order (Judicial Business) No VI(3). See also *Price v Seeley* (1834) 10 Cl & Fin 28 at 41, HL; *Cleaver v Cleaver* (1884) 9 App Cas 631, HL.

2 Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, SI 1982/1676, art 3, Sch II r 3(1)(c). The petition may be signed by the party himself if he appears in person: Sch II r 3(1)(c).

3 Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, SI 1982/1676, Sch II r 61. Where two Canadian counsel had signed a respondent's case, but neither was briefed at the hearing, the signature of one of the counsel who was instructed on the hearing was required: *Anon* (undated) Preston's Privy Council Appeals 170; *Practice Note* [1924] WN 64.

4 *Whitlock v Marriot* (1686) 1 Dick 16; *Fawcett v Garford* (1789) cited in Oswald on Contempt (3rd Edn) p 62.

UPDATE

1131 Documents requiring counsel's signature

TEXT AND NOTES 2, 3--SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(iii) Drafting of Documents and Giving of Advice/1132. Where counsel's certificate is necessary.

1132. Where counsel's certificate is necessary.

In some circumstances the certificate of counsel is necessary. Thus in cases where leave to appeal to the House of Lords is not required, the petition of appeal must be signed and the reasonableness of the appeal certified by two counsel¹. A petitioner who seeks special leave to appeal as a poor person to the Judicial Committee of the Privy Council requires a certificate of counsel that he has reasonable ground of appeal².

¹ *House of Lords Practice Directions and Standing Orders applicable to Civil Appeals* (October 2007) Direction 9.2, Standing Order (Judicial Business) No IV; *House of Lords Practice Directions and Standing Orders applicable to Criminal Appeals* (October 2007) Standing Order (Judicial Business) No IV. This applies only to Scottish appeals. In the case of an appeal from the Court of Appeal leave either of the Court of Appeal or of the House of Lords is necessary: see the Administration of Justice (Appeals) Act 1934 s 1; and **COURTS** vol 10 (Reissue) PARAS 360, 378. As from a day to be appointed s 1 is repealed by the Constitutional Reform Act 2005 ss 40(4), 146, Sch 9 Pt 1 para 3, Sch 18 Pt 5. At the date at which this volume states the law no such day had been appointed.

² See the Judicial Committee (General Appellate Jurisdiction) Rules Order 1982, SI 1982/1676, art 3, Sch II r 8 (amended by SI 2003/1879). No certificate of counsel is required to enable the respondent to appear on the appeal as a poor person: *Handford v George Clarke Ltd* [1907] 1 KB 181, CA.

UPDATE

1132 Where counsel's certificate is necessary

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

TEXT AND NOTE 2--SI 1982/1676 replaced: Judicial Committee (Appellate Jurisdiction) Rules Order 2009, SI 2009/224.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(iii) Drafting of Documents and Giving of Advice/1133. When counsel's advice protects solicitor.

1133. When counsel's advice protects solicitor.

Where a matter falls within counsel's expertise, for instance advising in specialist areas of law, drafting pleadings or deciding which witnesses to call at trial, a solicitor is not liable to the client for negligence even if counsel has acted incorrectly, provided the solicitor exercises his own independent judgment and reasonably thinks counsel's advice is correct¹. Assuming the exercise of independent judgment, and therefore even in respect of a matter falling within counsel's expertise, if a solicitor reasonably thinks counsel's advice is obviously, or glaringly wrong, it is his duty to reject it².

If counsel's advice is mistaken in respect of a matter within a solicitor's expertise, it is no defence for the solicitor to claim that he relied on that advice³.

Likewise, and subject to the same caveat, where costs are incurred by a solicitor acting on the advice of properly instructed counsel, such costs are not viewed, save in exceptional circumstances, as having been incurred unreasonably and will be allowed in a costs assessment between a solicitor and his client⁴.

Counsel's mistaken advice does not, however, negative a solicitor's prior negligence⁵; and if a solicitor does not supply counsel with material information which would, if known to counsel, have altered his opinion, the opinion of counsel does not protect the solicitor⁶.

A solicitor is sometimes justified in acting on the advice of counsel contrary to the wishes of his client; for example, where a client wished his solicitor to insert a number of letters in an affidavit, and the solicitor, acting on the advice of counsel that the letters were irrelevant, declined to insert them, the solicitor was held not liable⁷. Where, however, a solicitor enters into a compromise acting against the express instructions of his client, it is no defence that he was acting on the advice of counsel, however beneficial to the client⁸.

1 *Manning v Wilkin* (1848) 12 LTOS 249.

2 *Davy-Chiesman v Davy-Chiesman* [1984] Fam 48, [1984] 1 All ER 321, CA; *Locke v Camberwell Health Authority* [2002] Lloyd's Rep PN 23, [1991] 2 Med LR 249, [1990] NLJR 205; *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA.

3 *Davy-Chiesman v Davy-Chiesman* [1984] Fam 48, [1984] 1 All ER 321, CA; *Locke v Camberwell Health Authority* [2002] Lloyd's Rep PN 23, [1991] 2 Med LR 249, [1990] NLJR 205; *Ridehalgh v Horsefield* [1994] Ch 205, [1994] 3 All ER 848, CA.

4 *Francis v Francis* [1956] P 87 at 96, [1955] 3 All ER 836 at 840-841 per Sachs J. Cf *Re Clark* (1851) 1 De GM & G 43, where a solicitor's costs of an action unsuccessfully brought were disallowed on taxation; the solicitor failed to show that he had given proper advice before bringing the action or that counsel had advised in favour of the action. As to costs assessments see **CIVIL PROCEDURE** vol 12 (2009) PARAS 1747-1752, 1779-1802.

5 *Cook v S* [1966] 1 All ER 248, [1966] 1 WLR 635; affd [1967] 1 All ER 299, [1967] 1 WLR 457, CA.

6 *Ireson v Pearman* (1825) 5 Dow & Ry KB 687.

7 *Cates v Indermaur* (1858) 1 F & F 259.

8 *Fray v Voules* (1859) 1 E & E 839.

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1134. Protection of client.

In a claim for a malicious or fraudulent proceeding, the fact that the defendant has acted on the advice of counsel after putting the facts fully and fairly before him is a potent though not conclusive factor in considering whether the defendant had reasonable and probable cause to initiate the proceeding¹. Counsel's opinion will not, however, provide any protection if it was not based on a full, clear and sufficient statement of the facts², nor if the defendant did not act bona fide upon counsel's advice³.

Whilst the advice of counsel may be evidence of the good faith of those who follow it, it cannot alter the nature of what is done nor render lawful acts which the client is under a strict duty to do or to avoid⁴. The fact that a breach of an undertaking or court order is committed on the strength of the opinion of counsel does not prevent it from being a contempt of court; but the fact of counsel's advice is a mitigating factor in determining the punishment to be imposed⁵.

A mistake by counsel, for instance as to the time limit within which an appeal may be brought, is not a special circumstance entitling the court to extend time for appealing where the court's power to extend time is expressly confined to cases where special circumstances exist⁶; but such a mistake may be a reason for giving an extension of time where the discretion to grant it is not so restricted⁷, and the illness⁸ or inadvertence⁹ of counsel have in appropriate circumstances been held to be sufficient reasons.

If trustees, acting under the advice of counsel, make a wrong payment, they will nonetheless be liable for the money if they are sued by the beneficiary¹⁰, unless the beneficiary has acquiesced in the advice and has accepted the payment with full knowledge of the facts¹¹.

It is no ground for resisting an order for costs that the unsuccessful party was acting on the advice of counsel; for instance, where a purchaser of land relying on the opinion of counsel declines to accept a title, he will nonetheless be ordered to pay the vendor's costs, if the court holds that a good title can be made¹².

Differing orders as to costs have been made in circumstances where trustees, acting on the advice of counsel, have made proceedings necessary, in which they have been unsuccessful. It does not follow that because a claim is advised by counsel it is necessarily one which the trustees may properly bring¹³; and, if the court considers that the claim was not reasonably brought, or defended, for the benefit of the trust estate, the trustees will not be allowed to recover their costs out of the trust fund¹⁴. In some cases, the court has taken the view that it ought not to be too hard on trustees who have acted bona fide on counsel's advice and has made no order as to costs¹⁵. In other cases, the court has held that the advice of counsel cannot exonerate trustees from the consequences of their own acts and has ordered them to pay the costs of the successful party¹⁶.

1 *Abbott v Refuge Assurance Co Ltd* [1962] 1 QB 432, [1961] 3 All ER 1074, CA; *Abrath v North Eastern Ry Co* (1883) 11 QBD 440 at 455, CA, per Brett MR. See further **MISREPRESENTATION AND FRAUD**.

2 *Hewlett v Cruchley* (1813) 5 Taunt 277.

3 *Ravenga v Mackintosh* (1824) 2 B & C 693; *Andrews v Hawley* (1857) 26 LJ Ex 323.

4 *R v Great Western Ry* (1849) 18 LJM 145; *Broome v Speak* [1903] 1 Ch 586, CA per Buckley J (affd sub nom *Shepherd v Broome* [1904] AC 342, HL).

5 *Re Mileage Conference Group of the Tyre Manufacturers' Conference Ltd's Agreement* [1966] 2 All ER 849, [1966] 1 WLR 1137 (where reliance on the advice of leading counsel was reflected in a reduction in fines).

6 *Re Coles and Ravenshear's Arbitration* [1907] 1 KB 1, CA; *Nicholson v Piper* (1907) 24 TLR 16, CA; *Re Macadam (No 2), ex p Guillaume v Trustee* [1950] 1 All ER 659, CA; but see *Collyer v Dring* [1952] 2 All ER 1004n.

7 *Gatti v Shoosmith* [1939] Ch 841, [1939] 3 All ER 916, CA; *Baker v Faber* [1908] WN 9, CA.

8 *Rumbold v LCC and Scott* (1909) 100 LT 259, CA.

9 *Codling v John Mowlem & Co Ltd* (1913) 7 BWCC 13, CA.

10 *Re Jackson, Wilson v Donald* (1881) 44 LT 467; *Boulton v Beard* (1853) 3 De GM & G 608; but see *Vez v Emery* (1799) 5 Ves 141. See further **TRUSTS** vol 48 (2007 Reissue) PARAS 948, 1118.

11 *Rogers v Ingham* (1876) 3 ChD 351.

12 *Maling v Hill* (1785) 1 Cox Eq Cas 186; *Osborne v Rowlett* (1880) 13 ChD 774 per Jessel MR. See also *Peers v Ceeley* (1852) 15 Beav 209. As to the position of the vendor where a misleading condition of sale is inserted by mistake in conditions settled by conveyancing counsel to the court see *Re Banister, Broad v Munton* (1879) 12 ChD 131, CA.

13 *Stott v Milne* (1884) 25 ChD 710 at 714, CA, per Lord Selbourne LC. Conversely, the advice of counsel that a step may safely be taken if certain conditions are met does not necessarily make it unreasonable for the trustees to seek an order from the court to such effect, and the trustees may still be entitled to their costs of the application: *King v King* (1857) 1 De G & J 663.

14 *Re Beddoe, Downes v Cottam* [1893] 1 Ch 547, CA; *Re England's Settlement Trusts, Dobb v England* [1918] 1 Ch 24; *Singh v Bhasin* (1998) Times, 21 August, HL. See also *Doyle v Blake* (1804) 2 Sch & Lef 231 at 243 per Lord Redesdale LC.

15 *Ryan v Nesbitt* [1879] WN 100; *Angier v Stannard* (1834) 3 My & K 566; *Devey v Thornton* (1851) 9 Hare 222; *Re Cull's Trusts* (1875) LR 20 Eq 561.

16 *Re Knight's Trusts* (1859) 27 Beav 45 at 49; *Firmin v Pulham* (1848) 12 Jur 410 at 411. See further **TRUSTS** vol 48 (2007 Reissue) PARA 948.

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(iv) Authority of Counsel

1135. Instruction of counsel.

A barrister's authority to appear in proceedings is conferred by his instructions¹. When a barrister appears in court and states that he is instructed, the court will not inquire into his authority to appear², nor as to by whom he is instructed³, except when different barristers appear instructed by different solicitors claiming to represent the same party⁴.

If during the course of a hearing a litigant wishes to dispense with the services of his counsel and conduct his own case, it is a matter for the discretion of the judge whether to allow him to do so, but no one ought to have counsel forced upon him against his will and such an application should therefore normally be allowed⁵.

1 A mere retainer did not authorise a barrister to take any step in proceedings: *Ahitbol v Benedetto* (1810) 3 Taunt 225; *Doe d Crake v Brown* (1832) 5 C & P 315. Retainers have been abolished: Annual Statement 1980-81 p 54. As to the taking and acceptance of instructions see PARAS 1173-1199.

2 *Mole v Smith* (1820) 1 Jac & W 665, 673; *Murphy v Richardson* (1850) 13 ILR 430; *Re Hobler* (1844) 8 Beav 101; *Swinfen v Swinfen* (1856) 18 CB 485 (subsequent proceedings (1857) 24 Beav 549 at 561-563).

3 *Allen v Francis* [1914] 3 KB 1065, CA.

4 *Butterworth v Clapham* (1820) 1 Jac & W 673n; *Re London and Manchester Direct Independent Rly Co, ex p Bass* (1849) 18 LJ Ch 245.

5 *R v Woodward* (1944) 29 Cr App Rep 159, CCA; *R v Lyons* (1978) 68 Cr App Rep 104, CA. This is true in any case, but particularly in a criminal case as under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmnd 8969) art 6(3) a defendant in a criminal trial has a right to defend himself in person: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 134.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(iv) Authority of Counsel/1136. Implied authority of counsel.

1136. Implied authority of counsel.

Apart from such express authority as is conferred by his instructions¹, a barrister is ordinarily instructed on the implied understanding that he is to have complete control over the way in which the case is conducted, and has, unless and until his instructions are withdrawn, unlimited authority to do whatever he considers best for the interests of his client with regard to all matters that properly relate to the conduct of the case². This authority extends to all matters relating to the claim, including the calling and cross-examination of witnesses³, challenging a juror⁴, deciding what points to take⁵, choosing which of two inconsistent defences to put forward⁶, and even to agreeing to a compromise of the claim, or to a verdict, order or judgment⁷. The implied authority of counsel to agree a compromise is limited, however, to the issues in the claim, and a compromise affecting collateral matters will not bind the client unless he expressly assents⁸.

1 As to the taking and acceptance of instructions see PARAS 1173-1199.

2 *Swinfen v Lord Chelmsford* (1860) 5 H & N 890; *Lynch v Cowell* (1865) 12 LT 548; *Strauss v Francis* (1866) 1 QB 379 at 381, 383; *Earl of Beauchamp v Madresfield* (1872) LR 8 CP 245 at 253 per Brett J; *R v Greenwich County Court Registrar* (1885) 15 QBD 54, CA; *Matthews v Munster* (1887) 20 QBD 141, CA; *R v Bloomfield* [1997] 1 Cr App Rep 135, CA. An appeal against conviction wholly or substantially on the grounds of counsel's incompetent conduct of the trial will only be allowed in exceptional circumstances: see *R v Clinton* [1993] 2 All ER 998, [1993] 1 WLR 1181, CA.

3 *Hall v Stothard* (1816) 2 Chit 267; *Hatch v Lewis* (1861) 2 F & F 467; *Wallace v Cook* (1903) Times, 15 June; but see *R v Irwin* [1987] 2 All ER 1085, [1987] 1 WLR 902, CA (a decision which was treated by the Court of Appeal in *R v Ensor* [1989] 2 All ER 586, [1989] 1 WLR 497, as turning on its special facts). As to counsel's right to determine the order in which witnesses will be called without interference from the court see PARA 1213.

4 See Annual Statement 1973-74 p 53.

5 *Sourendra Nath Mitra v Srimati Tarubala Dasi* (1930) 46 TLR 191, PC. If counsel has satisfied himself that he has no argument to offer in support of his case, he ought at once to say so and withdraw, unless he has express instructions to the contrary: *Earl of Beauchamp v Madresfield* (1872) LR 8 CP 245 per Brett J.

6 *R v Denoel* (1916) 85 LJB 1756, CCA.

7 *Sourendra Nath Mitra v Srimati Tarubala Dasi* (1930) 46 TLR 191, PC; *Fray v Voules* (1859) 1 E & E 839 (attorney); *Chown v Parrott* (1863) 32 LJC 197 (attorney); *Thomas v Harris* (1858) 27 LJ Ex 353; *Strauss v Francis* (1866) 1 QB 379; *Matthews v Munster* (1887) 20 QBD 141, CA; *Scheyer v Wontner* (1890) 90 LT Jo 116, CA; but see *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, [1982] 1 All ER 1095, CA (extent of implied authority to compromise may be limited by such factors as the sum involved and the burden which would be imposed on the client).

8 *Swinfen v Swinfen* (1857) 24 Beav 549 (affd (1858) 2 De G & J 381, CA); *Swinfen v Lord Chelmsford* (1860) 5 H & N 890; *Gordon v Gordon* [1951] IR 301; *Gardiner v Moore* [1969] 1 QB 55, [1966] 1 All ER 365. A compromise does not involve collateral matters merely because it contains terms which the court could not have ordered by way of judgment in the claim: *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, [1982] 1 All ER 1095, CA.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(3) LEGAL RIGHTS AND DUTIES/(iv) Authority of Counsel/1137. Limitation of authority by client.

1137. Limitation of authority by client.

It is open to the client expressly to limit counsel's implied authority, for instance, to agree a compromise of the case¹, or, if the client considers that counsel is taking a course contrary to his interests, to withdraw his instructions². If counsel accepts any limitation on his authority, he must act accordingly; but he is not bound to do so, and, if the client attempts to fetter counsel's discretion as to how the case is to be conducted, counsel is entitled to return the brief³. It is objectionable for a barrister to undertake the conduct of a case giving up his discretion as to how to conduct it⁴, or to share the conduct of the case with the client; a litigant must elect either to conduct the case entirely in person or entrust the case entirely to his counsel⁵, even if the litigant is himself a barrister⁶. If the litigant instructs counsel, he cannot himself be heard, unless he revokes his counsel's authority and himself assumes the conduct of the case⁷.

1 *Sourendra Nath Mitra v Srimati Tarubala Dasi* (1930) 46 TLR 191, PC; *Scheyer v Wonthner* (1890) 90 LT Jo 116, CA; but see *Matthews v Munster* (1887) 20 QBD 141, CA.

2 *Swinfen v Swinfen* (1856) 18 CB 485; *Matthews v Munster* (1887) 20 QBD 141, CA.

3 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(c); and PARA 1185. See also *Strauss v Francis* (1866) 1 QB 379; *Matthews v Munster* (1887) 20 QBD 141, CA; *Schwarz v Clements* (1944) 171 LT 305 at 309. As to the Code of Conduct see PARA 1150.

4 *Strauss v Francis* (1866) 1 QB 379 at 381.

5 *Moscatti v Lawson* (1835) 1 Mood & R 454; *Shuttleworth v Nicholson* (1833) 1 Mood & R 254; *Longworth (or Yelverton) v Yelverton* (1867) LR 1 Sc & Div 218; *Parkinson v Hanbury* (1867) LR 2 HL 1 at 6. However, notwithstanding that a litigant has elected to conduct his own case, barristers have been permitted to be heard on occasion to argue points of law: see *Shuttleworth v Nicholson* (1833) 1 Mood & R 254; *R v White* (1811) 3 Camp 98; *R v Parkins* (1824) Ry & M 166. See also *R v Redhead* (1795) 25 State Tr 1003, where a barrister was, exceptionally, allowed to cross-examine witnesses alternately with his client.

6 *Newton v Ricketts* (1848) 2 Ph 624; *Newton v Chaplin* (1850) 19 LJCP 374; *New Brunswick and Canada Rly Co v Conybeare* (1862) 9 HL Cas 711 at 719 per Lord Westbury.

7 *R v Maybury* (1865) 11 LT 566. As to the circumstances in which a litigant may dispense with the services of counsel in the course of a hearing see PARA 1135.

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1138. Compromise in excess of authority.

Questions of difficulty have arisen where the authority of counsel to compromise a case has been expressly limited by the client, and counsel has entered into an agreement or consented to an order or judgment in spite of the dissent of the client, or on terms differing from those which the client authorised.

If the limitation of authority is communicated to the other side, consent by counsel which exceeds the limits of his authority will be of no effect¹. The position is more uncertain where the authority of counsel is limited, but the limitation is unknown to the other side, who enters into the compromise believing that the opponent's counsel has the ordinary unlimited authority. Counsel has an apparent or ostensible authority, at least as wide as his implied authority, to compromise a claim²; and in some cases, where the matter is within the apparent authority of counsel, the courts have refused to inquire whether there was any limitation, when it was not communicated to the other side, and have refused to set aside a compromise entered into by counsel³. The true rule seems to be, however, that in such a case the court has power to interfere; that it is not prevented by the agreement of counsel from setting aside the compromise; that it is a matter for the discretion of the court; and that when, in the particular circumstances of the case, grave injustice would be done by allowing the compromise to stand, it may be set aside, even though the limitation of counsel's authority was unknown to the other side⁴. It may be, however, that the court will not interfere on this ground if the compromise has been embodied in an order of the court which has been perfected⁵.

1 *Strauss v Francis* (1866) 1 QB 379 per Blackburn J.

2 See *Shepherd v Robinson* [1919] 1 KB 474, CA; *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, [1982] 1 All ER 1095, CA. The only qualification of counsel's apparent authority is that it does not extend to matters collateral to the action: *Waugh v HB Clifford & Sons Ltd*.

3 *Harrison v Rumsey* (1752) 2 Ves Sen 488; *Wright v Soresby* (1834) 2 Cr & M 671 (defendant present in court when his counsel consented to a verdict and made no protest); *Lynch v Cowell* (1865) 12 LT 548; *Strauss v Francis* (1866) 1 QB 379 per Blackburn J; *Matthews v Munster* (1887) 20 QBD 141, CA; *Welsh v Roe* (1918) 87 LJB 520 (solicitor); *Taylor v Cogswell* (1965) 109 Sol Jo 495; *Waugh v HB Clifford & Sons Ltd* [1982] Ch 374, [1982] 1 All ER 1095, CA.

4 *Stokes v Latham* (1888) 4 TLR 305, CA; *Neale v Gordon Lennox* [1902] AC 465, HL; *Marsden v Marsden* [1972] Fam 280, [1972] 2 All ER 1162 (where an earlier edition of the statement in the text was approved by Watkins J).

5 See *Marsden v Marsden* [1972] Fam 280, [1972] 2 All ER 1162.

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1139. When agreement of counsel is not binding.

Apart from the cases in which a compromise entered into by counsel in excess of his authority will not be enforced¹, where counsel has consented to a judgment or order on behalf of his client under a mistake as to essential facts, the court will allow the consent to be withdrawn before the judgment or order is drawn up². If, with his client's apparent authority and consent, however, counsel agrees to an order and there is no mistake or surprise, the client cannot arbitrarily withdraw the consent³, nor will he be allowed to do so because he subsequently discovers that he has a good ground of defence⁴.

Once an order or judgment obtained by the consent of counsel has been drawn up and passed, it cannot form the subject of an appeal and cannot be set aside except in a fresh claim brought for that purpose⁵. In such a claim, the compromise may be set aside on a ground which would invalidate any other agreement between the parties, including mistake, illegality or duress, but not otherwise⁶.

An agreement made in the course of a claim by counsel for a minor or other person under a disability is not binding on the person concerned, unless it is sanctioned by the court as being for the benefit of that person⁷. The court cannot, however, force a compromise on a minor against the opinion of his counsel⁸.

1 See PARA 1138.

2 *Furnival v Bogle* (1827) 4 Russ 142; *Carew v Cooper* (1864) 12 WR 767; *Craven v Stanley* (1876) 20 Sol Jo 542; *Lewis's v Lewis* (1890) 45 ChD 281; *Hickman v Berens* [1895] 2 Ch 638, CA; *Shepherd v Robinson* [1919] 1 KB 474, CA.

3 *Holt v Jesse* (1876) 3 ChD 177; *Rumsey v King* (1876) 33 LT 728; *Harvey v Croydon Union Rural Sanitary Authority* (1884) 26 ChD 249, CA; *Hewitt v Hull and Holderness Conservative Permanent Benefit Building Society* (1887) 4 TLR 35; *Re West Devon Great Consols Mine* (1888) 38 ChD 51, CA; *Re Wedge, Wedge v Panter* (1908) 98 LT 436; *Schwarz v Clements* (1944) 171 LT 305. It is submitted that *Rogers v Horn* (1878) 26 WR 432, which appears inconsistent with this proposition, is wrongly decided. As to the manner of hearing counsel's evidence as to the circumstances of an alleged compromise see PARA 1147.

4 *Elsas v Williams* (1884) 52 LT 39. A consent order may be enforced against the client by the other party either by an action on the agreement or by way of proceedings for committal: see *Porter v Cooper* (1834) 1 Cr M & R 387. Where, however, the client has refused to consent to an order in the terms of a compromise previously agreed on his behalf by his counsel, the only method of enforcing the compromise is by a claim on the agreement: see *Green v Crockett, Crockett v Green* (1865) 6 New Rep 368.

5 *Downing v Cage* (1699) 1 Eq Cas Abr 165, HL; *Harrison v Rumsey* (1752) 2 Ves Sen 488; *Bradish v Gee* (1754) 1 Keny 73; *Thomas v Hewes* (1834) 2 Cr & M 519; *Chambers v Mason* (1858) 5 CBNS 59; *A-G v Tomline* (1877) 7 ChD 388; *Ellender v Wood* (1888) 32 Sol Jo 628, CA; *Ainsworth v Wilding* [1896] 1 Ch 673; *Re Leonard* (1899) 107 LT Jo 409; *de Lasala v de Lasala* [1980] AC 546, [1979] 2 All ER 1146, PC. It is submitted that the dictum of Jessel MR to the contrary in *Mullins v Howell* (1879) 11 ChD 763 at 766 is incorrect.

6 *A-G v Tomline* (1877) 7 ChD 388; *Huddersfield Banking Co Ltd v Henry Lister & Son Ltd* [1895] 2 Ch 273, CA (mistake); *Wilding v Sanderson* [1897] 2 Ch 534, CA. See also *Cumming v Ince* (1847) 11 QB 112 (duress); *Windhill Local Board of Health v Vint* (1890) 45 ChD 351, CA (illegality); *Turner v Green* [1895] 2 Ch 205 (mere nondisclosure by the other party of a material fact is not a reason for refusing to enforce a compromise).

7 *Rhodes v Swithinbank* (1889) 22 QBD 577, CA; *Biddell v Dowse* (1827) 6 B & C 255 (reference to arbitration); *Rosborough v Boyse* (1854) 3 I Ch R 540; *Hargrave v Hargrave* (1850) 12 Beav 408.

8 *Re Birchall, Wilson v Birchall* (1880) 16 ChD 41, CA. See further **CHILDREN AND YOUNG PERSONS** vol 5(4) (2008 Reissue) PARA 1423.

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1140. Statements of counsel.

Admissions made by counsel in court in the presence of the lay client or his solicitor or other representative must be taken to have been made with the authority of the client, and are binding on the client unless and until withdrawn¹. Such an admission may subsequently be withdrawn by the client, however, unless the other party has acted to his detriment on the faith of it, so that the circumstances give rise to an estoppel². An admission made by counsel for the purpose of a particular trial will not in any event be binding at a retrial³. Even if withdrawn, an admission made by counsel in court is admissible as evidence against the client at subsequent hearings of the facts stated⁴; and an agreed statement of facts, signed by counsel for each party, may be used as evidence of the facts there stated at a subsequent hearing by one party against the other⁵.

The court will not accept an undertaking from counsel on behalf of his client in circumstances where counsel states that he has no instructions to give such an undertaking, and any undertaking given by counsel in such circumstances will not bind the client provided that notice of an application to set aside the order is given before the order has been perfected⁶. An undertaking given in court by counsel with his client's authority ought, however, to be observed as scrupulously as an order of the court, and breach of such an undertaking is punishable by committal⁷.

Though a statement made by counsel for a party that he does not intend to appeal ought to be carried out in good faith, it is no bar to an appeal if not embodied in any court order⁸.

In non-litigious matters, the statements of counsel can bind the client only when counsel has express authority or when his opinion is adopted by the client.

In negotiations for the purchase of property, the approval of title by counsel for the purchaser on the basis of an abstract laid before him does not amount to a waiver by the purchaser of all objections to title⁹, unless the purchaser adopts the opinion of his counsel and deals with the vendor upon that view, in which case he may become estopped from afterwards repudiating his counsel's opinion¹⁰. A statement of case signed by counsel on behalf of a party may constitute a sufficient written note or memorandum to satisfy the Statute of Frauds¹¹; but a denial by counsel in a statement of case on behalf of a tenant of the landlord's title is insufficient to give rise to a right of forfeiture¹².

1 *The Clifton, Kelly v Bushby* (1835) 3 Knapp 375. A statement made by counsel in open court will be binding on the client even where a claim might lie against counsel in negligence, from which counsel would be immune: see *Worldwide Corp'n Ltd v Marconi Communications Ltd* (1999) Times, 7 July, CA.

2 *H Clark (Doncaster) Ltd v Wilkinson* [1965] Ch 694, [1965] 1 All ER 934, CA; *Firth Cleveland Ltd (Laing's) Application (No 2)* [1974] RPC 377.

3 *Dawson v Great Central Rly Co* (1919) 88 LJBK 1177, CA.

4 See *Colledge v Horn* (1825) 3 Bing 119; *Mahony v Mahony* (1850) 2 Ir Jur 129; *Haller v Worman* (1861) 3 LT 741.

5 *Van Wart v Wolley* (1823) Ry & M 4; *Edmunds v Newman* (1823) Ry & M 5n.

6 *Smith v Beeman* (1842) 6 Jur 222.

7 *Pennell v Roy* (1853) 20 LTOS 269; *Halford v Hardy* (1899) 81 LT 721; *D v A & Co* [1900] 1 Ch 484.

- 8 *Re Hull and County Bank, Trotter's Claim* (1879) 13 ChD 261, CA.
- 9 *Deverell v Lord Bolton* (1812) 18 Ves 505; *M'Culloch v Gregory* (1855) 1 K & J 286.
- 10 *Alexander v Crosby* (1844) 1 Jo & Lat 666.
- 11 *Grindell v Bass* [1920] 2 Ch 487. See the Statute of Frauds 1677 s 4; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1052.
- 12 *Warner v Sampson* [1959] 1 QB 297, [1959] 1 All ER 120, CA.

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1141. Notice to counsel.

Notice given to counsel instructed by a party is not to be imputed to the client where the notice is given to counsel when employed by another client in another matter¹; and the adventitious presence in court of counsel when an injunction was continued against his client has been held not to be such notice to the client as to justify committal for contempt². A barrister has no general authority to accept service of documents on behalf of a client and is perfectly entitled to decline to do so; but if a barrister, after the client and his instructing solicitor have left court, accepts documents relevant to the matter in issue from the other party, this will constitute good service³.

A communication made to counsel out of court by the opposing solicitor or party, or a statement made by counsel out of court, does not have the same effect as a communication to or from the solicitor who instructs counsel⁴.

In relation to the sale of land a purchaser is deemed to have had notice of any instrument or matter, if it is not capable of registration⁵, or any fact or thing which has come to the knowledge of his counsel as such in the same transaction with respect to which the question of notice to the purchaser arises⁶.

1 *Preston v Tubbin* (1684) 1 Vern 286; *Worsley v Earl of Scarborough* (1746) 3 Atk 392.

2 *Carrow v Ferrior, Dunn v Ferrior* (1868) 3 Ch App 719, 37 LJ Ch 719.

3 *Penman v Parker* [1986] 2 All ER 862, [1986] 1 WLR 882.

4 *Richardson v Peto* (1840) 1 Man & G 896. As to the ancient distinction between advocates and attorneys see PARA 1038.

5 Ie under the Land Charges Act 1972: see **LAND CHARGES**.

6 Law of Property Act 1925 s 199(1)(ii)(b).

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(v) Duties, Privileges and Immunities

1142. Arrest; jury service.

Whilst going to, remaining at and returning from court when engaged on business there, barristers are immune from arrest on civil process¹.

Barristers are no longer ineligible for jury service².

1 *Meekins v Smith* (1791) 1 Hy Bl 636; *Childerston v Barrett* (1809) 11 East 439; *Pitt v Coomes* (1834) 3 Nev & MKB 212; *Newton v Harland* (1839) 8 Scott 70; *Anon* (1839) 9 LJCP 176. Service of process on a barrister in a court of justice, however, is not void: *Newton v London, Brighton and South Coast Rly Co* (1849) 7 Dow & L 328.

2 Barristers were formerly ineligible for jury service by virtue of the Juries Act 1974; however, the relevant provisions have been substituted and no longer refer to barristers: see s 1, Sch 1 (substituted by the Criminal Justice Act 2003 s 321, Sch 33 paras 1, 15). As to jury service generally see **JURIES** vol 61 (2010) PARA 801 et seq.

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1143. Absolute privilege for defamatory statements.

No claim will lie against counsel in respect of words uttered in the course of any judicial proceedings¹, even if it is alleged that the words were uttered maliciously and without justification or excuse and even if the words are irrelevant to every issue contested in the proceedings². The reason for this absolute privilege is not a desire to prevent claims from being brought against persons who have acted maliciously; it is to secure the freedom and independence of counsel and to protect persons who have acted innocently and bona fide from the vexation of defending unmeritorious claims³.

The privilege covers everything spoken or written in the ordinary course of any proceedings before any court or tribunal recognised by law⁴, including statements made in the course of preparing for the proceedings⁵. It does not protect the separate publication of a speech containing defamatory matter⁶. The privilege applies whether the claim is framed in defamation or in some other cause, such as malicious prosecution or conspiracy⁷. It does not apply, however, to a claim brought in respect of a malicious prosecution or arrest or an abuse of the process of the court merely because one step in the conduct complained of involved the utterance of words in court and where the utterance of those words is not the substance of the complaint⁸.

The privilege is not confined to counsel, but applies equally to judges, parties and witnesses⁹, and to solicitors acting as advocates¹⁰. The privilege of counsel extends to the client in the sense that the client cannot be sued in respect of defamatory statements made by counsel on the client's behalf¹¹.

1 *Munster v Lamb* (1883) 11 QBD 588, CA; and see *Brook v Montague* (1605) Cro Jac 90; *Wood v Gunston* (1655) Sty 462; 3 Bl Com (1st Edn) 29; *R v Skinner* (1772) Lofft 54 per Lord Mansfield CJ; *Hodgson v Scarlett* (1818) 1 B & Ald 232; *Needham v Dowling* (1845) 15 LJCP 9; *Dawkins v Lord Rokeby* (1873) LR 8 QB 255. As to proceedings which will, and will not, be classified as judicial for the purpose of attracting the protection of absolute privilege see *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431, CA; *Bottomley v Brougham* [1908] 1 KB 584; *Lincoln v Daniels* [1962] 1 QB 237, [1961] 3 All ER 740, CA; and see further **ADMINISTRATIVE LAW; LIBEL AND SLANDER**. As to contempt of court by counsel see PARA 1249.

2 *Munster v Lamb* (1883) 11 QBD 588, CA. As to counsel's professional duty not to utter such words see PARA 1210.

3 *Munster v Lamb* (1883) 11 QBD 588, CA; and see *Bottomley v Brougham* [1908] 1 KB 584 per Channell J.

4 *Dawkins v Lord Rokeby* (1873) LR 8 QB 255; *Munster v Lamb* (1883) 11 QBD 588, CA.

5 *Watson v M'Ewan*, *Watson v Jones* [1905] AC 480, HL.

6 *Flint v Pike* (1825) 4 B & C 473; *Saunders v Mills* (1829) 6 Bing 213; *Birch v Walsh* (1846) 10 I Eq R 93.

7 *Marrinan v Vibart* [1963] 1 QB 528, [1962] 3 All ER 380, CA.

8 *Roy v Prior* [1971] AC 470, [1970] 2 All ER 729, HL; and see **LIBEL AND SLANDER** vol 28 (Reissue) PARA 97.

9 *Dawkins v Lord Rokeby* (1873) LR 8 QB 255; *Revis v Smith* (1856) 18 CB 126; *Seaman v Netherclift* (1876) 2 CPD 53, CA; *Munster v Lamb* (1883) 11 QBD 588, CA.

10 *Mackay v Ford* (1860) 5 H & N 792.

11 See *R v Kiernan* (1855) 5 ICLR 171.

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1144. No immunity from liability for negligence.

The immunity from claims in negligence which barristers (and other advocates) formerly possessed in respect of their conduct of cases in court¹ has been held no longer to be in the public interest². Liability for negligence is accordingly governed by the same principles as are applicable to other professional persons³.

A barrister presumably remains immune from suit over advice which culminates in a settlement which requires the approval of the court⁴; and a claim that a barrister has been negligent in criminal proceedings will ordinarily be struck out as an abuse of process so long as the criminal conviction stands, as the claim would otherwise involve a collateral attack on the verdict of the criminal trial⁵.

1 See *Rondel v Worsley* [1969] 1 AC 191, [1967] 3 All ER 993, HL; *Saif Ali v Sydney Mitchell & Co (a firm)* [1980] AC 198, [1978] 3 All ER 1033, HL.

2 See *Arthur JS Hall & Co (a firm) v Simons* [2002] 1 AC 615, [2000] 3 All ER 673, HL. Stated grounds for the removal of the immunity included: that none of the reasons said to justify it (ie the 'cab rank' rule, the analogy with the immunities of witnesses and others involved in legal proceedings, the duty of the advocate to the court and the public policy against re-litigating a decision of a court of competent jurisdiction) had sufficient weight to sustain the immunity in relation to civil proceedings; that the principles of res judicata, issue estoppel and abuse of process were sufficient to prevent any negligence action being maintained which would be unfair or would bring the administration of justice into disrepute; and that the obstacle of proving that a better standard of advocacy would have produced a different outcome and the ability of the court to strike out unsustainable claims under CPR 24.2 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 524) would restrict the ability of clients to bring unmeritorious and vexatious claims against advocates in any case. The decision has retroactive effect: *Awoyomi v Radford* [2007] EWHC 1671 (Admin), [2008] 3 WLR 34, [2007] NLJR 1046. See also *Moy v Pettmann* [2005] UKHL 7, [2005] 1 All ER 903, [2005] 1 WLR 581.

3 See *Bolam v Friern Hospital Management Committee* [1957] 2 All ER 118, [1957] 1 WLR 582 per McNair J; and **NEGLIGENCE** vol 78 (2010) PARA 23.

4 *Kelley v Corston* [1998] QB 686, [1997] 4 All ER 466, CA. Were this not to be so, the principle that a judge could not be asked to explain what he had said or done in court would be liable to be circumvented: *Kelley v Corston* per Judge LJ.

5 *Arthur JS Hall & Co (a firm) v Simons* [2002] 1 AC 615, [2000] 3 All ER 673, HL; *Somasundaram v M Julius Melchior & Co (a firm)* [1989] 1 All ER 129, [1988] 1 WLR 1394, CA.

UPDATE

1144 No immunity from liability for negligence

NOTE 2--*Awoyomi*, cited, reported at [2007] EWHC 1671 (QB), [2008] QB 793.

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1145. Duty of care.

Although a barrister does not ordinarily enter into a contract for the provision of his services with his professional or lay client¹, he owes a duty of care in tort to his clients² and may in some circumstances owe such a duty to other persons for whose benefit his services are obtained³. In general no duty is owed to parties with adverse interests⁴.

The standard of care is that of the ordinary skilled practitioner in the relevant sector of the profession⁵. Not every error made by a barrister will constitute negligence⁶. In order to amount to a breach of duty, the act or omission must be such as no reasonably well-informed and competent member of the profession could have done or omitted to do⁷. Thus the mere fact that a barrister omits to plead or argue a point which is reasonably arguable cannot of itself demonstrate negligence⁸.

1 There is, however, no longer any rule of law which prevents a barrister from entering into such a contract: see PARA 1293.

2 See *Rondel v Worsley* [1969] 1 AC 191, [1967] 3 All ER 993, HL. A barrister is no longer immune from liability for negligence: see PARA 1144.

3 See *Mathew v Maughold Life Assurance Co Ltd* (1987) 3 PN 98, CA; *Estill v Cowling Swift & Kitchin* [2000] Lloyd's Rep PN 378.

4 *Orchard v South Eastern Electricity Board* [1987] QB 565, [1987] 1 All ER 95, CA; *Connolly-Martin v D* [1999] PNLR 826, [1999] Lloyd's Rep PN 790, CA.

5 See *Mathew v Maughold Life Assurance Co Ltd* (1987) 3 PN 98, CA; *Matrix Securities Ltd v Theodore Goddard (a firm)* [1998] PNLR 290, [1988] STC 1; *Estill v Cowling Swift & Kitchin* [2000] Lloyd's Rep PN 378; *Firstcity Insurance Group Ltd v Orchard (a firm)* [2002] EWHC 1455 (QB), [2002] Lloyd's Rep PN 543; and see further **NEGLIGENCE** vol 78 (2010) PARA 23.

6 *Rondel v Worsley* [1969] 1 AC 191, [1967] 3 All ER 993, HL, per Lord Upjohn; *Saif Ali v Sydney Mitchell & Co* [1980] AC 198, [1978] 3 All ER 1033, HL, per Lord Wilberforce, Lord Diplock, and Lord Salmon; *Cook v S* [1966] 1 All ER 248, [1966] 1 WLR 635. Nor is it incumbent upon a barrister to spell out all of her reasoning when giving a recommendation, in particular if this should be at the expense of giving clear and readily understood advice: *Moy v Pettmann* [2005] UKHL 7, [2005] 1 All ER 903, [2005] 1 WLR 581.

7 *Saif Ali v Sydney Mitchell & Co* [1980] AC 198, [1978] 3 All ER 1033, HL, per Lord Diplock; *McFarlane v Wilkinson* [1997] 2 Lloyd's Rep 259, CA; *Firstcity Insurance Group Ltd v Orchard (a firm)* [2002] EWHC 1455 (QB), [2002] Lloyd's Rep PN 543.

8 *McFarlane v Wilkinson* [1997] 2 Lloyd's Rep 259, CA; *Firstcity Insurance Group Ltd v Orchard (a firm)* [2002] EWHC 1455 (QB), [2002] Lloyd's Rep PN 543.

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1146. Legal professional privilege.

Confidential communications passing between a barrister and his professional or lay client for the purpose of requesting or giving legal advice, such as instructions to counsel and counsel's advice, are privileged from disclosure; the court will not, at the instance of a third party, compel the client, and will not allow the barrister, to disclose them¹. The privilege is not confined to such communications as are made in the course of, or in anticipation of, litigation², but the communications must be made in a professional capacity³; and the communications must be of a confidential character⁴. Statements of case and counsel's indorsement on his brief are not confidential communications⁵, but drafts of statements of case and other documents settled by counsel are privileged, as are observations and notes written by counsel on his instructions⁶. The mere fact that counsel has been retained is not ordinarily privileged⁷. The privilege does not extend to communications made for the purpose of committing a fraud or crime⁸; but where legal professional privilege exists, it is absolute and is not capable of being overridden by any other public interest⁹. The right to the confidentiality of communications between lawyer and client is also protected by Community law¹⁰ and by the Convention for the Protection of Human Rights and Fundamental Freedoms¹¹.

Legal professional privilege is not merely a rule of evidence but is a substantive legal right of great constitutional importance, being a necessary bulwark of the citizen's right of access to justice¹². The privilege is the privilege of the client and not of the barrister or other legal professional adviser¹³. It may be waived by the client, but never ceases unless waived by the client or his successors in title¹⁴. Privilege is not waived by referring to a document in a statement of case¹⁵, affidavit¹⁶ or list of documents¹⁷; but it is waived when a document is disclosed to the other party in the course of litigation¹⁸, unless the other party has procured inspection of the document by fraud or the document has been made available for inspection as a result of an obvious mistake¹⁹. When privilege is waived by disclosure of a document before trial or by its use in cross-examination, the waiver relates only to the document itself (and to any document from which it cannot fairly be severed²⁰); but if a privileged document is adduced in evidence, the waiver extends to the transaction to which the evidence goes and to other documents relevant to that transaction²¹. If a client sues or makes a complaint about his barrister or other legal adviser, he impliedly waives privilege in relation to all matters relevant to the claim or complaint²².

Where no waiver of privilege has taken place, an injunction may be granted to compel another party into whose hands a privileged document has come to deliver up the document and any copies or notes of it and not to disclose or make any use of any information contained in the document²³.

1 *Waldron v Ward* (1654) Sty 449; *Bolton v Liverpool Corp'n* (1833) 1 My & K 88; *Knight v Marquess of Waterford* (1836) 2 Y & C Ex 22; *Nias v Northern and Eastern Rly Co* (1838) 3 My & Cr 355; *Combe v London Corp'n* (1842) 1 Y & C Ch Cas 631; *Holmes v Baddeley* (1844) 1 Ph 476; *Jenkyns v Bushby* (1866) LR 2 Eq 547; *Underwood v Secretary of State in Council for India* (1866) 35 LJ Ch 545; *Bristol Corp'n v Cox* (1884) 26 ChD 678; *Pearce v Foster* (1885) 15 QBD 114, CA; *Curtis v Beaney* [1911] P 181; *Hobbs v Hobbs* [1960] P 112, [1959] 3 All ER 827, [1959] 3 WLR 942; *Alfred Crompton Amusement Machines Ltd v Customs and Excise Comrs (No 2)* [1972] 2 QB 102, [1972] 2 All ER 353, CA (affd [1974] AC 405, [1973] 2 All ER 1169, HL) (privilege attaches equally where the barrister is an employed barrister). As to a barrister's duty of confidentiality see also PARA 1201. See further **CIVIL PROCEDURE** vol 11 (2009) PARA 558 et seq.

2 *Clagett v Phillips* (1842) 2 Y & C Ch Cas 82; *Pearse v Pearse* (1846) 1 De G & Sm 12; *Reece v Trye* (1846) 9 Beav 316; *Penruddock v Hammond* (1847) 11 Beav 59; *Minet v Morgan* (1873) 8 Ch App 361; *Mostyn v West*

Mostyn Coal and Iron Co (1876) 34 LT 531. Communications made in the course of or in anticipation of litigation are protected by a further privilege, however, which is not automatically waived as a result of waiver of the privilege between lawyer and client: *George Doland Ltd v Blackburn Robson Coates & Co* [1972] 3 All ER 959, [1972] 1 WLR 1338; but see *General Accident Fire and Life Assurance Corp Ltd v Tanter, The Zephyr* [1984] 1 All ER 35, [1984] 1 WLR 100.

3 An opinion given by a barrister as a friend is not privileged from disclosure: *Smith v Daniell* (1874) LR 18 Eq 649; *Wilson v Rastall* (1792) 4 Term Rep 753.

4 *Penruddock v Hammond* (1847) 11 Beav 59; *Gardner v Irvin* (1879) 4 ExD 49, CA.

5 *Nicholl v Jones* (1865) 2 Hem & M 588; *Plumley v Horrell* [1868] WN 240; *Walsham v Stainton* (1863) 2 Hem & M 1; *Re Brown, Tyas v Brown* (1880) 42 LT 501.

6 *Manser v Dix* (1855) 1 K & J 451; *Walsham v Stainton* (1863) 2 Hem & M 1; *Vignerone-Dahl (British and Colonial) Ltd v Pettit* [1925] WN 177. Drafts and notes made by counsel are in any event his own property and hence are not documents which the client can be ordered to disclose, unless they are in the client's physical possession: see *Stanhope v Roberts* (1741) 2 Atk 214; *Chantrey-Martin & Co v Martin* [1953] 2 QB 286, [1953] 2 All ER 691, CA (accountants).

7 *Forshaw v Lewis* (1855) 1 Jur NS 263.

8 *R v Cox and Railton* (1884) 14 QBD 153; *Williams v Quebrada Railway Land and Copper Co* [1895] 2 Ch 751; *R v Smith* [1915] WN 309, CCA; *O'Rourke v Darbishire* [1920] AC 581, HL; *Butler v Board of Trade* [1971] Ch 680, [1970] 3 All ER 593; *Banque Keyser Ullman SA v Skandia (UK) Insurance Co Ltd* [1986] 1 Lloyd's Rep 336, CA.

9 *R v Derby Magistrates' Court, ex p B* [1996] AC 487, [1995] 4 All ER 526, HL.

10 See Case 155/79 *AM & S Europe Ltd v EC Commission* [1983] QB 878, [1983] 1 All ER 705, ECJ. The protection applies provided that the lawyer is an independent lawyer and the communications are made for the purposes and in the interests of the defence of the client: *AM & S Europe Ltd v EC Commission*.

11 See the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmnd 8969) arts 6, 8; *Campbell v United Kingdom* (1992) 15 EHRR 137, ECtHR; *Niemietz v Germany* (1992) 16 EHRR 97, ECtHR; *General Mediterranean Holdings SA v Patel* [1999] 3 All ER 673, [2000] 1 WLR 272; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 149 et seq.

12 *R v Derby Magistrates' Court, ex p B* [1996] AC 487, [1995] 4 All ER 526, HL; *General Mediterranean Holdings SA v Patel* [1999] 3 All ER 673, [2000] 1 WLR 272.

13 *Wilson v Rastall* (1792) 4 Term Rep 753 per Buller J; *A-G v Mulholland* [1963] 2 QB 477, [1963] 1 All ER 767, CA, per Lord Denning MR.

14 *Calcraft v Guest* [1898] 1 QB 759, CA; *Crescent Farm (Sidcup) Sports Ltd v Sterling Offices Ltd* [1972] Ch 553, [1971] 3 All ER 192. As to the position where a barrister is inhibited in defending an application for wasted costs because relevant material is covered by legal professional privilege which the client has not waived see **CIVIL PROCEDURE** vol 12 (2009) PARA 1811.

15 *Roberts v Oppenheim* (1884) 26 ChD 724, CA; *Buttes Gas & Oil Co v Hammer (No 3)* [1981] QB 223, [1980] 3 All ER 475, CA.

16 *Infields Ltd v P Rosen & Son* [1938] 3 All ER 591, CA.

17 *Re Briamore Manufacturing Ltd* [1986] 3 All ER 132, [1986] 1 WLR 1429; *Guinness Peat Properties Ltd v Fitzroy Robinson Partnership* [1987] 2 All ER 716, [1987] 1 WLR 1027, CA.

18 *Great Atlantic Insurance Co v Home Insurance Co* [1981] 2 All ER 485, [1981] 1 WLR 529, CA; *Re Briamore Manufacturing Ltd* [1986] 3 All ER 132, [1986] 1 WLR 1429.

19 *Guinness Peat Properties Ltd v Fitzroy Robinson Partnership* [1987] 2 All ER 716, [1987] 1 WLR 1027, CA; *Pizzey v Ford Motor Co* (1993) Times, 8 March, CA; *Al Fayed v Metropolitan Police Comr* [2002] EWCA Civ 780, (2002) Times, 17 June.

20 *R v Secretary of State for Transport, ex p Factortame (No 5)* (1997) Times, 16 May; *Interleasing (UK) Ltd v Morris* [2002] EWHC 1086 (Ch), [2002] 2 Lloyd's Rep 563.

21 *General Accident Fire and Life Assurance Corpn Ltd v Tanter, The Zephyr* [1984] 1 All ER 35, [1984] 1 WLR 100.

22 *Lillicrap v Nalder & Son (a firm)* [1993] 1 All ER 724, [1993] 1 WLR 94, CA.

23 *Lord Ashburton v Pape* [1913] 2 Ch 469, CA; *Goddard v Nationwide Building Society* [1987] QB 670, [1986] 3 All ER 264, CA; *English and American Insurance Co Ltd v Herbert Smith & Co* [1987] NLJ Rep 148; *Guinness Peat Properties Ltd v Fitzroy Robinson Partnership* [1987] 2 All ER 716, [1987] 1 WLR 1027, CA.

UPDATE

1146 Legal professional privilege

NOTE 12--See also *A Local Authority v B* [2008] EWHC 1017 (Fam), [2009] 1 FLR 289.

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1147. Counsel as witness.

A barrister may be called as a witness in the same way as any other person¹. A barrister cannot, however, be compelled to give evidence of matters communicated to him in confidence by or on behalf of his lay client which are covered by legal professional privilege²; and he is under a duty not to give evidence voluntarily of confidential matters without the consent of the client³. What a barrister has seen or heard in court when appearing as counsel in an earlier proceeding is neither confidential nor covered by privilege and may be given in evidence⁴.

A barrister is required by the Code of Conduct of the Bar to refuse or cease to act as counsel in a case in which he is or becomes a witness⁵, although certain exceptions have been made to this requirement in earlier times⁶.

1 It has been held that a barrister is not entitled to compensation for giving evidence for loss of time as a barrister: see *Fraser v Fraser* (1845) 4 Notes of Cases 319; but quaere.

2 See PARA 1146.

3 See PARA 1201.

4 *Guinea's Case* (1841) 1r Cir Rep 167; *Brown v Foster* (1857) 1 H & N 736. See, however, *Curry v Walter* (1796) 1 Esp 456 (where it was held that a barrister cannot be compelled to give evidence of what he said at a former hearing, and that, if counsel did not volunteer to testify, the matter should be proved by other means).

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(d), 608(a); and PARAS 1186, 1192. As to the Code of Conduct see PARA 1150.

6 In several cases barristers have, at the request of their clients, given evidence as to what occurred during negotiations for the settlement of the claim or as to the circumstances in which they consented to a compromise. In some such cases counsel have made statements from their places at the bar without being sworn: see *Kempshall v Holland* (1895) 14 R 336, CA; *Hickman v Berens* [1895] 2 Ch 638, CA. In other cases counsel have given evidence on oath, either from their places at the bar, or from the witness box: see *Baillie's Case* (1788) 21 State Tr 340; *Wilding v Sanderson* [1897] 2 Ch 534 at 539, CA; *Owen v Lord Rothermere* (1927) Times, 12 February, 16 February; *Schwarz v Clements* (1944) 171 LT 305; *Appleby v Errington* (1952) Times, 18 October. See also *Owen v Lord Rothermere* (1927) Times, 12 February, 16 February (where counsel for the defendant with the consent of all parties continued to act after giving evidence).

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1148. Undue influence.

A barrister must not make use of his position as counsel to his own advantage; and if a client, being under the undue influence of counsel, executes a deed in favour of counsel, the deed may be set aside¹.

¹ *Broun v Kennedy* (1863) 33 Beav 133; on appeal (1864) 4 De G J & Sm 217. See also *Thornhill v Evans* (1742) 2 Atk 330 (where the grant of a stewardship of a manor 'in fee' obtained by a barrister from his client without explaining the meaning of the words was set aside). In *Segrave v Kirwan* (1828) Beat 157 (where a barrister drew up a will in which he was appointed sole executor; there was no disposition of personalty, the effect of this under the law as it then was being that the personalty passed to the executor; it was held that the barrister ought to have explained to the testator the legal effect of the will, that this duty was not excused by ignorance of the legal rule and that he held as trustee for the next of kin). See also *Corley v Lord Stafford*, *Campbell v Corley* (1857) 1 De G & J 238 (where a settlement prepared by a barrister before his marriage to the testator in which he gave himself an interest in stock expectant on her death was set aside in favour of the next of kin). If such undue influence exists when the deed is executed, it is immaterial that the relation of counsel and client has ceased: *Broun v Kennedy*. When there is no undue influence, a deed executed by a client in favour of his counsel may stand as a voluntary instrument, and is not void on grounds of public policy: *Leslie v Verschoyle* (1815) Beat 535.

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(4) PROFESSIONAL PRACTICE AND CONDUCT

(i) Sources of Law

1149. Rules governing the professional conduct of barristers.

The professional conduct of barristers is regulated by rules derived from three principal sources: the law of England and Wales; directions regarding practice before particular courts; and the Code of Conduct of the Bar of England and Wales¹. In addition to the Code of Conduct, the Bar Council² and the Bar Standards Board³ have published written standards for the conduct of professional work and other guidance to which barristers are required or encouraged to have regard⁴. There are also various unwritten customs and practices of the profession to which barristers are conventionally expected to adhere⁵.

1 As to the Code of Conduct see PARA 1150.

2 As to the meaning of 'Bar Council' see PARA 1042 note 1.

3 As to the Bar Standards Board see PARA 1049.

4 See PARA 1150.

5 Examples are the practice whereby a barrister notifies his opponent in advance of a hearing of any authorities which he proposes to cite, the practice of notifying an opponent whose statement of claim it is intended to apply to strike out (Annual Statement 1956 p 28) and the convention that a barrister should not criticise his instructing solicitor in open court (Annual Statement 1970-71 p 31). For further examples see *The Bar Handbook 2008* paras 3.185-3.244.

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1150. The Code of Conduct.

The Code of Conduct of the Bar of England and Wales is issued by the Bar Council, and administered by the Bar Standards Board¹. It is a private or domestic system of rules which has no effect outside the profession and is neither binding on nor enforceable by a court².

The general purpose of the Code of Conduct is to provide the requirements for practice as a barrister and the rules and standards of conduct applicable to barristers which are appropriate in the interests of justice³. It aims to provide common and enforceable rules and standards for self-employed barristers⁴ and to make appropriate provision for employed barristers taking into account the fact that such barristers are employed to provide legal services to or on behalf of their employer⁵.

Amendments and additions to the Code of Conduct may be made by resolution of the Bar Council⁶. Every barrister who exercises before any court a right of audience granted by the Bar Council has a statutory duty to comply with those rules of conduct which overrides any inconsistent obligation which he may have (otherwise than under the criminal law)⁷.

The Code of Conduct applies to all barristers whenever called to the Bar⁸. It applies to international work⁹ and whether a barrister is practising in England and Wales or elsewhere¹⁰. A failure by a barrister to comply with the Code of Conduct may constitute professional misconduct¹¹.

Both the Bar Council and the Board have issued various written guidance to barristers¹² including, in the latter case, the Written Standards for the Conduct of Professional Work¹³. A practising barrister is specifically required by the Code of Conduct to have regard to such written standards¹⁴, and a self-employed barrister¹⁵ is required to have regard to any guidance relevant to the administration and conduct of his practice¹⁶.

1 As to the meaning of 'Bar Council' see PARA 1042 note 1. As to the Bar Standards Board see PARA 1049. At the date at which this volume states the law, the current edition of the Code of Conduct was the eighth edition, which was adopted by the Bar Council on 18 September 2004 and came into force on 31 October 2004 (Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 101). This edition of the Code of Conduct does not apply to anything done or omitted to be done before 31 October 2004 (para 1101(a)); in such cases, and notwithstanding para 101, the edition of the Code of Conduct in force at the relevant time applies as if the eighth edition had not been adopted by the Bar Council (para 1101(b)). The first edition of the Code of Conduct was approved by the Bar in General Meeting on 15 July 1980. As to the history of self-regulation by the Bar see PARA 1040-1041.

2 *R v Visitors to the Inns of Court, ex p Calder* [1994] QB 1 at 65, [1993] 2 All ER 876 at 924-925 per Staughton LJ; *R v McFadden* (1975) 62 Cr App Rep 187; *Re Harrison* [1908] 1 Ch 282. The Code of Conduct has strong persuasive force, however, and will be taken into account by a court when deciding if a barrister has acted properly: see eg *R v Ulcay* [2007] EWCA Crim 2379, [2008] 1 All ER 547, [2008] 1 WLR 1209. It is for the Bar to determine the rules of conduct governing its members, subject to the possibility that a rule might be held to be ineffective if the judges decide it is contrary to public policy or liable to undermine the proper administration of justice: *Re T (a barrister)* [1982] QB 430, [1981] 2 All ER 1105. The rules contained in the Code of Conduct in respect of professional conduct must be within the scope of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmd 8969) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**): see *Re P (a Barrister)* [2005] 1 WLR 3019.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 104. As to the meaning of 'barrister' see PARA 1033 note 1. As to what constitutes practice as a barrister see PARA 1152 et seq.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 104(a). As to self-employed barristers see PARA 1036. The Code of Conduct requires self-employed barristers: (1) to be completely independent in conduct and in professional standing as sole practitioners (para 104(a)(i)); (2) to act only as consultants instructed by solicitors and other approved persons, save where instructions can be properly dispensed with (para 104(a)(ii)); and (3) to acknowledge a public obligation based on the paramount need for access to justice to act for any client in cases within their field of practice (para 104(a)(iii)).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 104(b). As to the meaning of 'legal services' see PARA 1152. As to employed barristers and their employers see PARA 1037.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 103. Such amendments and additions are operative on such date as the resolution appoints or if no such date is appointed on the later of: (1) the date of the resolution; and (2) the date when approval of the amendment or addition, if required, is given under the Courts and Legal Services Act 1990 Sch 4 (see PARA 329 et seq): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 103(a), (b). However, such alteration will not have effect without the agreement of the Secretary of State: see PARA 336.

7 See Courts and Legal Services Act 1990 s 27(2A)(b) (and PARA 497); and the Legal Services Act 2007 s 188 (and PARA 1169).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 105. However, the application of the Code of Conduct may differ depending on whether the barrister in question is employed, self-employed or non-practising (as to these distinctions see PARAS 1035-1037). The Code of Conduct also applies to European lawyers registered with the Bar Council: para 107 (and see PARA 1151). The Bar Council may waive the duty imposed on a barrister to comply with the Code of Conduct in such circumstances and to such extent as it thinks fit and either conditionally or unconditionally: see para 108. The Code of Conduct has no application to student members of the Inns of Court, who are subject to the Consolidated Regulations (see PARA 1060).

9 In its application to international work, the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) is subject to Annexe A (International Practice Rules): see PARA 1164.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 106. As to the professional conduct of English barristers operating in member states outside England and Wales see Annexe Q (Code of Conduct for European Lawyers).

11 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901. As to professional misconduct see PARA 1247 et seq.

12 This guidance covers many different aspects of a barrister's practice, in the case of the Bar Council usually focussed on legislation, court direction or procedure, and in the case of the Bar Standards Board covering practising areas and requirements, the administration of a practice and professional conduct.

13 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work; and PARA 1150.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(d). As to practising barristers see PARA 1035.

15 As to self-employed barristers see PARA 1036.

16 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(c); and PARA 1240.

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1151. Code of Conduct for lawyers in the European Union.

The Council of the Bars and Law Societies of Europe (CCBE), of which the Bar Council is a member, has issued a Code of Conduct for European Lawyers¹. This code has been incorporated as part of the Code of Conduct of the Bar². It applies to cross-border activities of lawyers within the European Union and European Economic Area³, that is, all professional contacts with lawyers of member states other than the lawyer's own and the professional activities of the lawyer in a member state other than his own (whether or not the lawyer is physically present in that member state)⁴.

1 The code was originally adopted on 28 October 1988, and has been subsequently amended on 28 November 1998, 6 December 2002 and 19 May 2006.

2 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe Q (Code of Conduct for European Lawyers). As to the Code of Conduct see PARA 1150.

3 I.e. such lawyers as are defined by Council Directive 77/249/EC of 22 March 1977 (OJ L078, 26.03.77, p 17) to facilitate the effective exercise by lawyers of freedom to provide services, and Council Directive 98/5/EC of 16 February 1998 (OJ L077, 14.3.98, p. 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe Q (Code of Conduct for European Lawyers) para 1.4. The Code of Conduct for European Lawyers also applies to lawyers of the Observer members of the CCBE: para 1.4.

4 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe Q (Code of Conduct for European Lawyers) para 1.5.

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(ii) Practising Rights

A. BARRISTERS GENERALLY

1152. Practice as a barrister.

For the purposes of the Code of Conduct of the Bar¹, a barrister practises as a barrister² if he supplies legal services³ and in connection with their supply either holds himself out (or allows himself to be held out) as a barrister⁴ or exercises a right which he has by reason of being a barrister⁵.

For the purposes of the Code of Conduct, 'legal services' includes legal advice, representation, and drafting or settling statements of case, witness statements⁶, affidavits or other legal documents⁷, but does not include:

- 1679 (1) sitting as a judge or arbitrator or acting as a mediator⁸;
- 1680 (2) lecturing in or teaching law or writing or editing law books, articles or reports⁹;
- 1681 (3) examining newspapers, periodicals, books, scripts and other publications for libel, breach of copyright, contempt of court and the like¹⁰;
- 1682 (4) communicating to or in the press or other media¹¹;
- 1683 (5) exercising the powers of a commissioner for oaths¹²;
- 1684 (6) giving advice on legal matters free to a friend or relative or acting as unpaid or honorary legal adviser to any charitable, benevolent or philanthropic institution¹³; or
- 1685 (7) in relation to a barrister who is a non-executive director of a company or a trustee or governor of a charitable, benevolent or philanthropic institution or a trustee of any private trust, giving to the other directors, trustees or governors the benefit of his learning and experience on matters of general legal principle applicable to the affairs of the company, institution or trust¹⁴.

¹ ie the Code of Conduct of the Bar of England and Wales (8th Edn, 2004). As to the Code of Conduct see PARA 1150.

² 'Practising barrister' means a person who is practising as a barrister within the meaning of the definition in the text: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001; and PARA 1035 note 2.

³ For these purposes, a reference to the supply of legal services includes an offer to supply such services: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 201(b).

⁴ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 201(a)(i). The Bar Standards Board Guidance on Holding Out as a Barrister provides a non-exhaustive list of examples of behaviour which might amount to 'holding out', including: (1) describing oneself as a barrister in any printed material used in connection with the provision of legal services, in particular in advertising or publicity, on a card or letterhead, or on premises; (2) describing oneself as a barrister to clients or prospective clients; (3) indicating to opposing parties or their representatives (eg in correspondence) that one is a barrister; (4) describing oneself as a barrister or as 'counsel', wearing robes, or sitting in a place reserved for counsel, in court; and (5) using other descriptions in such contexts which imply that the individual is a barrister (eg membership of an Inn of Court). As to guidance see PARA 1150.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 201(a)(ii). As to barristers' rights of audience see PARAS 1109-1123. As to barristers' rights in connection with the drafting of certain legal documents see PARAS 1129-1134.

6 The Bar Standards Board has published guidance on the preparation of witness statements.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

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1153. The right to practise.

A barrister may practise as a barrister¹ provided that:

1686 (1) he has complied with the training requirements which were in force at the date of his call to the Bar²;

1687 (2) he has complied with any applicable requirements of the regulations for continuing professional development³;

1688 (3) he has a current practising certificate⁴; and

1689 (4) he has provided the Bar Council with details of his current practising address⁵.

Barristers may, however, by notifying certain information to the Bar Council and to their clients, exempt themselves from the provisions of the Code of Conduct applying only to practising barristers⁶.

A barrister who is a pupil⁷ may also supply legal services as a barrister, subject to certain conditions⁸. Barristers who are members of other authorised bodies⁹ and barristers who hold certain offices are prevented from, or restricted in, exercising their right to practise¹⁰.

1 As to practising as a barrister see PARA 1152 et seq.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(a). As to the Code of Conduct see PARA 1150. The relevant training requirements are those set out in the Consolidated Regulations (2007): see para 202(a). For requirements relating to admission, education, pupillage, examination and call to the Bar see PARAS 1060-1108. A barrister who was called to the Bar before 1 January 2002 but who has not completed or has been exempted from 12 months' pupillage in accordance with the Consolidated Regulations in force at the relevant time may practise as a barrister, but the exercise of his rights of audience is restricted: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 203.4, 1102. As to the restriction on such a person's rights of audience see PARA 1158 note 2. As to the Consolidated Regulations see PARA 1060.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(b). As to the continuing professional development requirements see Annexe C (Continuing Professional Development Regulations); and PARA 1154.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(c). A current practising certificate is a certificate issued by the Bar Council in accordance with Annexe D (The Practising Certificate Regulations): see PARA 1155. As to the meaning of 'Bar Council' see PARA 1042 note 1.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(d). This requirement is satisfied by a barrister providing in writing to the Bar Council details of the current address or addresses, with telephone numbers, of the chambers or office from which he supplies legal services and (if he is an employed barrister) the name, address, telephone number and nature of the business of his employer: para 202(d). 'Chambers' means a place at or from which one or more self-employed barristers carry on their practices, and also refers, where the context so requires, to all the barristers (excluding pupils) who for the time being carry on their practices at or from that place: para 1001. As to employed barristers and their employers see PARA 1037.

6 A barrister who was called to the Bar before 31 July 2000 and who is deemed to be practising on the grounds that he holds himself out or allows himself to be held out as a barrister (ie by virtue of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 201(a)(i) (see PARA 1152)) in England and Wales, and a barrister whenever called who is deemed to be practising by virtue of para 201(a)(i) outside England and Wales and who is not subject to Annexe A (International Practice Rules) r 4(e) (see PARA 1164), is not subject to the rules in the Code of Conduct applying only to practising barristers provided that certain requirements are

satisfied: paras 206.1, 206.2. The first requirements are that if the barrister supplies any legal services to any person, he must provide in writing to the Bar Council the contact and employment details set out in note 5 and, unless he is employed only to offer services to his employer, he (or, if he is supplying legal services to clients of his employer, that employer) is currently insured by insurers authorised to conduct such business against any and all claims in respect of civil liability for professional negligence arising out of or in connection with the supply of legal services for at least the first £250,000 of each and every claim, with an excess not exceeding £500: paras 206.1(a), 206.2. The second requirements are that before supplying legal services to any person or employer, and when first dealing with any third party in the course of supplying legal services, the barrister informs them fully and comprehensibly in writing: (1) of his status and the fact that he does not hold a practising certificate under the Code of Conduct; (2) of the relevant limitations under the Code of Conduct on the legal services he may undertake; (3) that he is not fully regulated by the Bar Council; and (4) of the absence of available compensatory powers for any inadequate professional service he may render: paras 206.1(b), 206.2. Any barrister who before 31 July 2000 had delivered to the Bar Council the notification and information referred to in the Code of Conduct of the Bar of England and Wales (6th Edn) para 212(b)(ii) or was exempted by waiver from that requirement remains entitled until 31 July 2005 to supply legal services to the public on condition that he complies with those requirements of para 212(b)-(e) which on 31 July 2000 applied to him and provided that he may not thereby be entitled to exercise any right of audience which he has by reason of being a barrister: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1106. As to the meaning of 'legal services', and as to the supply of legal services, see PARA 1152. As to practising certificates see PARA 1155. As to inadequate professional services see PARA 1248. A barrister who is exempted under para 206.1 is not authorised to provide immigration advice or services under the Immigration and Asylum Act 1999 s 84 (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 170): see *R v K* [2008] EWCA Crim 1900, [2008] All ER (D) 93 (Aug).

7 As to pupillage see PARAS 1080-1097.

8 See PARA 1093.

9 'Authorised body' means any body other than the Bar Council authorised to grant rights of audience or rights to conduct litigation under the Courts and Legal Services Act 1990: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

10 See PARA 1157.

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1154. Continuing professional development.

A barrister may not practise¹ unless he has complied with the Bar Council's² requirements as to continuing professional development³. These requirements are contained in regulations⁴, and their application to an individual barrister depends upon when he was called⁵. The requirements may be waived in whole or in part⁶.

1 As to practising as a barrister see PARA 1152.

2 As to the meaning of 'Bar Council' see PARA 1042 note 1.

3 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(b); and PARA 1153. As to the Code of Conduct see PARA 1150. A barrister who is practising as a foreign lawyer and who does not give advice on English law or supply legal services in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law) need not, in relation to international work substantially performed outside England and Wales, show that he has complied with the continuing professional development requirements: Annexe A (International Practice Rules) r 4(e). A foreign lawyer is a person (other than a registered European lawyer) who is authorised by a competent professional body to practise in a system of law other than English law: para 1001. As to the meaning of 'European lawyer' see PARA 535. As to the meaning of 'registered European lawyer' see PARA 1102 note 7. 'English law' includes international law and the law of the European Union: para 1001. As to the meaning of 'legal services' see PARA 1152. As to international work see PARA 1164. A registered European lawyer undertaking professional work in England and Wales is also exempt from the continuing professional development requirements: see Annexe B (Registered European Lawyers Rules) r 6; and PARA 1166.

4 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe C (Continuing Professional Development Regulations).

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe C (Continuing Professional Development Regulations) regs 1-9. AS to the call to the bar generally see PARAS 1039, 1075-1078.

6 See Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe C (Continuing Professional Development Regulations) regs 10, 11.

UPDATE

1154 Continuing professional development

NOTE 3--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B amended on 1 September 2009.

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1155. Practising certificates.

A barrister may not practise as a barrister¹ unless he holds a current practising certificate issued by the Bar Standards Board². The Board is authorised by statute to require applicants for practising certificates to pay fees³. Different fees may be set for different descriptions of barrister⁴, but fees may not be set with a view to raising a total amount in excess of that applied by the Board for designated purposes⁵.

A barrister qualifies for a practising certificate if he satisfies the other requirements which confer upon him the right to practise⁶, has paid the prescribed fee⁷, and has paid any required insurance premium so as to be insured against claims for professional negligence⁸. The Board may, however, refuse to issue a certificate to a barrister if it is satisfied that he has failed to comply with any of these requirements or would be practising in breach of relevant provisions of the Code of Conduct⁹. A practising certificate is valid until the due date for renewal¹⁰ unless the barrister's status changes¹¹ or the holder is disbarred or suspended from practice¹².

1 As to practising as a barrister see PARA 1152.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(c); and see PARA 1153. As to the Code of Conduct see PARA 1150. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). The rules relating to and requiring the holding of practising certificates apply to all barristers and registered European lawyers holding themselves out as offering legal services as barristers to the public or to their employer, although they do not apply to non-practising barristers: Annexe D (The Practising Certificate Regulations) reg 4. As to the meaning of 'European lawyer' see PARA 535. As to the meaning of 'registered European lawyer' see PARA 1102 note 7. As to the meaning of 'legal services' see PARA 1152. As to the meaning of 'employer', in the context of an employed barrister, see PARA 1037 note 10. As to non-practising barristers see PARA 1035. 'The public' includes any lay client of a practising barrister (or in the case of an employed barrister, of the barrister's employer) other than any of the persons referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501 (see PARA 1161); and 'lay client' means the person on whose behalf a practising barrister (or where appropriate in the case of an employed barrister, his employer) is instructed: see para 1001.

Full practising certificates must be issued to all barristers and registered European lawyers notifying the Board that they wish to commence or recommence practice and annually thereafter on each renewal date (Annexe D (The Practising Certificate Regulations) reg 10), although the Board may not issue a practising certificate to any barrister who has been disbarred or is subject to an order suspending him from practice (Annexe D (The Practising Certificate Regulations) reg 14). As to the responsibility to ensure that all barristers practising from chambers have current practising certificates see para 404.2(j); and PARA 1241. As to the meaning of 'chambers' see PARA 1153 note 5.

3 See the Access to Justice Act 1999 s 46(1). No provision of rules made by the Bar Standards Board about practising certificates has effect unless approved by the Secretary of State: see s 46(5) (amended by SI 2003/1887). As from a day to be appointed the Access to Justice Act 1999 s 46(5) is repealed by the Legal Services Act 2007, ss 208(1), 210, Sch 21, paras 127, 131(b), Sch 23. At the date at which this volume states the law no such day had been appointed. See further the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) Appendix.

4 Access to Justice Act 1999 s 46(2)(a); Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) reg 18.

5 Access to Justice Act 1999 s 46(2)(b) (amended by SI 2001/135). The designated purposes are: (1) the regulation, education and training of barristers and those wishing to become barristers; (2) the participation by the Bar Council in law reform and the legislative process; (3) the provision by barristers and those wishing to become barristers of free legal services to the public; (4) the promotion of the protection by law of human rights

and fundamental freedoms; and (5) the promotion of relations between the Bar Council and bodies representing the members of legal professions in jurisdictions other than England and Wales: Access to Justice Act 1999 s 46(2)(b)(i)-(v) (as so amended). As to the power to amend the Access to Justice Act 1999 s 46(2)(b) see the Access to Justice Act 1999 s 46(3), (4) (amended by SI 2003/1887). As to the application of fee revenue see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) regs 5-9.

As from a day to be appointed the Access to Justice Act 1999 s 46(2)(b), (3), (4) is repealed by the Legal Services Act 2007, ss 208(1), 210, Sch 21, paras 127, 131(b), Sch 23. At the date at which this volume states the law no such day had been appointed.

6 He that he has satisfied the applicable requirements as to training (see PARA 1063 et seq) and continuing professional development (see PARA 1154) and has provided details of his current practising address to the Bar Standards Board (see PARA 1153): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) reg 15(a)-(c).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) reg 15(d). The due date for the payment of the practising certificate fee for self-employed barristers and registered European lawyers is 1 January each year, and the due date for the payment of the fee for employed barristers and registered European lawyers in employment is 6 April each year: Annexe D (The Practising Certificate Regulations) reg 16. If the fee remains unpaid for more than one month after the due date, a penalty is payable: Annexe D (The Practising Certificate Regulations) reg 22. As to self-employed barristers see PARA 1036. As to employed barristers see PARA 1037.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) reg 15(e). Insurance is compulsory if a barrister supplies legal services to the public: see PARA 1239.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) reg 15(f). The relevant provisions of the Code of Conduct are paras 203 (rights of audience) (see PARA 1158), 204 (supply of legal services to the public) (see PARA 1159), 205 (supply of legal services to the public through another person) (see PARA 1159), 401 (taking of instructions) (see PARA 1160), 501-503 (supply of legal services by employed barristers) (see PARAS 1037, 1161).

10 See note 7.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) reg 11(a). The Bar Standards Board must amend a practising certificate if a barrister changes his category from self-employed to employed or vice versa provided that the barrister has paid any additional amount to cover the difference in fee applicable to each category: Annexe D (The Practising Certificate Regulations) reg 12.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) reg 11(b).

UPDATE

1155 Practising certificates

NOTE 5--Day appointed is 1 January 2010: SI 2009/3250.

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1156. Fitness to practise.

For the purposes of the Code of Conduct of the Bar¹, a barrister is unfit to practise if he is suffering from serious incapacity due to his physical or mental condition² as a result of which his fitness to practise is seriously impaired³, and his suspension or the imposition of conditions is necessary for the protection of the public⁴. Where information or a complaint in writing is received by the Bar Standards Board⁵ about any barrister who holds a practising certificate which raises a question whether the barrister is unfit to practise, the Complaints Commissioner may refer the case to a medical panel⁶ which may, if having heard the case against the barrister it is satisfied that he is or is about to become unfit to practise, suspend him, prohibit him from carrying out any public access instructions, or make his continued practice subject to conditions⁷. Barristers suspended or prohibited from practising by medical panels may apply for their cases to be reviewed⁸, and decisions of a medical panel may also be appealed against⁹.

¹ See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004). As to the Code of Conduct see PARA 1150.

² Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe O (Fitness to Practise Rules) r 4(g)(1). Such a condition includes any addiction: Annexe O (Fitness to Practise Rules) r 4(g)(1). All barristers are subject to the Fitness to Practise Rules: para 903(f).

³ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe O (Fitness to Practise Rules) r 4(g)(2).

⁴ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe O (Fitness to Practise Rules) r 4(g)(3).

⁵ The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

⁶ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe O (Fitness to Practise Rules) r 7. As to the composition, procedure and powers of medical panels see Annexe O (Fitness to Practise Rules) rr 5, 11-20.

The Commissioner must refer the case if: (1) the case having been referred to him under Annexe O (Fitness to Practise Rules) r 7, he considers a barrister may be unfit to practise; (2) a complaint of professional misconduct or inadequate professional service has been referred to the Commissioner or the Complaints Committee during the investigation of which it appears that a barrister may be unfit to practise; (3) in any other circumstances it appears to the Commissioner, the Complaints Committee or any other disciplinary panel or tribunal that a barrister may be unfit to practise; or (4) a barrister requests the Commissioner in writing to refer his case to a medical panel: Annexe O (Fitness to Practise Rules) r 8. As to what constitutes professional misconduct see PARA 1247. As to the meaning of 'inadequate professional service' see PARA 1248. As to the Complaints Commissioner and the Complaints Committee see PARA 1251.

⁷ See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe O (Fitness to Practise Rules) r 16(b)-(j). As to public access see PARA 1176. Alternatively the panel may decide to take no action against the barrister: Annexe O (Fitness to Practise Rules) r 16(a).

⁸ See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe O (Fitness to Practise Rules) rr 17, 19-20. As to review panels see Annexe O (Fitness to Practise Rules) r 6. The Chairman of the Complaints Committee may also apply for a review: see Annexe O (Fitness to Practise Rules) r 18.

⁹ See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe O (Fitness to Practise Rules) rr 21-24. There is no right of appeal from a decision of a review panel: Annexe O (Fitness to Practise Rules) r 25.

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1157. Barristers who are members of other authorised bodies.

A barrister who is a member of another authorised body¹ and is currently entitled to practise as such may not practise as a barrister². Additionally, a barrister who:

- 1690 (1) has had his name struck off the roll of solicitors³ or been excluded from membership of an authorised body;
- 1691 (2) has at any time been found guilty of any professional misconduct or is the subject of any continuing disciplinary proceedings in relation to his professional conduct as a member of an authorised body; or
- 1692 (3) has at any time been refused a practising certificate as a solicitor⁴ or had his practising certificate suspended or made subject to a condition,

may not practise as a barrister until the Complaints Committee⁵ has considered his case and, if it decides to refer the case to a disciplinary tribunal⁶, until the case is finally determined⁷.

1 As to the meaning of 'authorised body' see PARA 1153 note 9.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 808.1. As to the Code of Conduct see PARA 1150. A barrister who is a member of another authorised body and currently entitled to practise as a member of that body is not deemed to be practising as a barrister if he holds himself out as a barrister provided that before supplying legal services to any person or employer, and when first dealing with any third party in the course of supplying legal services, he informs them fully and comprehensibly in writing: (1) of his status and the fact that he does not hold a practising certificate under the Code of Conduct; (2) of the relevant limitations under the Code of Conduct on the legal services he may undertake; (3) that he is not fully regulated by the Bar Council; and (4) of the absence of available compensatory powers for any inadequate professional services he may render: para 808.4. As to the meaning of 'legal services', as to the supply of legal services, and for examples of behaviour which might amount to 'holding out' as a barrister, see PARA 1152. As to the meaning of 'employer', in the context of an employed barrister, see PARA 1037 note 10. As to practising certificates see PARA 1155. As to inadequate professional services see PARA 1248.

A barrister who becomes entitled to practise as a member of another authorised body must forthwith inform the Bar Council and the Inn or Inns of which he is a member in writing of that fact: para 808.2. As to the Bar Council see PARAS 1042-1048. As to the Inns of Court see PARAS 1050-1052.

3 As to the solicitors' roll see PARA 619.

4 As to solicitors' practising certificates see PARA 667 et seq.

5 As to the Complaints Committee see PARA 1251.

6 Is a disciplinary tribunal constituted under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (Disciplinary Tribunals Regulations): see para 1001. As to disciplinary tribunals see further PARAS 1269-1280.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 808.3.

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1158. Exercise of rights of audience.

A barrister may exercise any right of audience which he has by reason of being a barrister¹, provided that he is entitled to practise as a barrister², although if he is of less than three years' standing³, this is subject to the requirement that his principal place of practice is either:

1693 (1) a chambers⁴ or annexe of chambers which is also the principal place of practice of a qualified person⁵ who is readily available to provide guidance to the barrister⁶; or

1694 (2) an office of an organisation of which an employee, partner or director is a qualified person who is readily available to provide guidance to the barrister⁷.

A barrister who is a pupil may also exercise a right of audience which he has by reason of being a barrister, subject to certain conditions⁸.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 203.1. As to the meaning of 'right of audience', and as to the rights of audience a person has by reason of being a barrister, see PARA 1109. Any barrister who on 31 July 2000 was entitled to exercise any right of audience which he had by reason of being a barrister is entitled to exercise that right of audience: paras 203.4, 1103. As to the Code of Conduct see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 203.1(a). As to entitlement to practise as a barrister see the Code of Conduct para 202; and PARA 1153. A barrister who was called to the Bar before 1 January 2002 but who has not completed or been exempted from 12 months' pupillage in accordance with the Consolidated Regulations in force at the relevant time may practise as a barrister but cannot exercise a right of audience unless he has notified the Bar Standards Board in writing of his wish to do so and either: (1) he has complied with any conditions as to further training which the Board may require; or (2) he has been informed by the Board that he is not required to comply with any such conditions: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 203.4, 1102. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). As to the Consolidated Regulations see PARA 1060.

3 A barrister is treated for these purposes as being of a particular number of years' standing if for a period (which need not be continuous and need not have been as a member of the same authorised body) of at least that number of years he: (1) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body (Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 203.2(a)); (2) has made such practice his primary occupation (para 203.2(b)); and (3) has been entitled to exercise a right of audience before every court in relation to all proceedings (para 203.2(c)). Note that any barrister who during any period before 31 July 2000 was entitled to exercise a right of audience as an employed barrister may for the purpose of para 203.2(c) (see head (3) above) count that period as if he had been entitled during that period to exercise a right of audience before every court in relation to all proceedings, provided that he has notified the Bar Standards Board in writing of his wish to do so and either: (a) he has complied with any conditions (including any conditions as to further training) which the Board may require; or (b) he has been informed by the Board that he is not required to comply with any such conditions: paras 203.4, 1104. As to the meaning of 'authorised body' see PARA 1153 note 9. As to rights of audience generally see PARAS 1109-1123. 'Court' includes any court or tribunal or any other person or body, whether sitting in public or in private, before whom a barrister appears or may appear as an advocate: para 1001. As to pupillage see PARAS 1080-1097.

4 As to the meaning of 'chambers' see PARA 1153 note 5.

5 A person is a qualified person for these purposes if he: (1) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations) or as a member of another authorised body for a period (which need not have been as a member

of the same authorised body) of at least six years in the previous eight years (Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 203.3(a)); (2) has for the previous two years made such practice his primary occupation (para 203.3(b)(i)) and has been entitled to exercise a right of audience before every court in relation to all proceedings (para 203.3(b)(ii)); (3) is not acting as a qualified person in relation to more than two other persons (para 203.3(c)); and (4) has not been designated by the Bar Standards Board as unsuitable to be a qualified person (para 203.3(d)). Note that any person who became entitled before 31 July 2002 to exercise a right of audience before every court in relation to all proceedings is a qualified person without having satisfied para 203.3(b)(ii) if he has: (a) has satisfied the other requirements of para 203.3; (b) notified the Board in writing of his wish to act as a qualified person; and (c) been designated by the Board as suitable so to act: paras 203.4, 1105.

In respect of a barrister who is exercising a right to practise in a member state other than the United Kingdom pursuant to EC Council Directive 98/5 of 16 February 1998 (OJ L078, 14.03.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained (the 'Establishment Directive'), a person is also a qualified person for these purposes if he: (i) has been designated by the Board as possessing qualifications and experience in that state or country which are equivalent to the qualifications and experience required by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 203.3(a), (b); (ii) is not acting as a qualified person in relation to two or more than two other persons; and (iii) has not been designated by the Board as unsuitable to be a qualified person: Annexe A (International Practice Rules) r 5. For the purposes of the Code of Conduct, 'member state' means a state which is a member of the European Communities: para 1001.

- 6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 203.1(b)(i).
- 7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 203.1(b)(ii).
- 8 See PARA 1093.

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1159. Supply of legal services to the public.

A practising barrister¹ may supply legal services² to the public³ provided that:

- 1695 (1) he complies with the requirements as to the exercise of rights of audience⁴;
- 1696 (2) he is insured against claims for professional negligence arising out of the supply of his services⁵.

In general⁶, a practising barrister may not supply legal services to the public through or on behalf of any other person⁷.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2.

2 As to the meaning of 'legal services', and as to the supply of legal services, see PARA 1152. The requirements set out in this paragraph do not apply in relation to international work substantially performed outside England and Wales by a barrister who is practising as a foreign lawyer and who does not give advice on English law or supply legal services in connection with any proceedings or contemplated proceedings in England and Wales (other than as an expert witness on foreign law): see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (International Practice Rules) r 4(e). As to the meanings of 'foreign lawyer' and 'English law' see PARA 1154 note 3. As to international work see PARA 1164.

3 As to the meaning of 'the public' see PARA 1155 note 2.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 204(a). As to the requirements for the exercise of rights of audience see PARA 1158.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 204(b). A practising barrister may supply legal services to the public provided he is covered (and in the case of an employed barrister his employer is covered) by insurance against claims for professional negligence arising out of the supply of his services in such amount and upon such terms as are currently required by the Bar Standards Board: see para 204(b). As to the insurance requirement (which is varied in the case of barrister who is undertaking international work) see further PARA 1239. As to employed barristers and their employers see PARA 1037. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 There are exceptions for certain employed barristers (see PARA 1161) and in relation to international work substantially performed outside England and Wales (see PARA 1164). Pupil barristers may also supply legal services subject to certain conditions: see PARA 1093.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 205. For these purposes, 'person' includes a partnership company or other corporate body: para 205.

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B. SELF-EMPLOYED BARRISTERS

1160. Services which a self-employed barrister may not supply.

Provided he is qualified to do so¹, a self-employed barrister² may supply legal services to the public³, but must not, whether or not he is acting for a fee, in the course of his practice⁴:

- 1697 (1) undertake the management, administration or general conduct of a lay client's⁵ affairs⁶;
- 1698 (2) conduct litigation or inter partes work⁷;
- 1699 (3) investigate or collect evidence for use in any court⁸;
- 1700 (4) take any proof of evidence in a criminal case⁹;
- 1701 (5) attend at a police station without the presence of a solicitor¹⁰ to advise a suspect or interviewee as to the handling and conduct of police interviews¹¹; or
- 1702 (6) act as a supervisor for the purposes of the provision of immigration advice or immigration services¹².

1 As to a barrister's right to practise see PARA 1153. As to the requirements which a barrister must satisfy in order to be entitled to supply legal services to the public see PARA 1159.

2 As to self-employed barristers see PARA 1036.

3 As to the meaning of 'legal services', and as to the legal service which a practising barrister is entitled to supply, see PARA 1152. As to the meaning of 'practising barrister' see PARA 1152 note 2. As to the meaning of 'the public' see PARA 1155 note 2. The work which is within the ordinary scope of a barrister's practice consists of advocacy, drafting pleadings and other legal documents, and advising on questions of law: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 2.1. As to the Written Standards see PARA 1150.

4 As to what constitutes practice as a barrister see PARA 1152 et seq. The restrictions do not apply in relation to international work substantially performed outside England and Wales: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe A (International Practice Rules) r 4(b). As to the Code of Conduct see PARA 1150. As to international work see PARA 1164.

5 As to the meaning of 'lay client' see PARA 1155 note 2.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(i); Written Standards for the Conduct of Professional Work para 2.1.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(ii). Such work includes the conduct of correspondence with an opposite party, instructing any expert witness or other person on behalf of the lay client, or accepting personal liability for the payment of any such person: para 401(b)(ii). Employed barristers may, however, conduct litigation: see PARA 1162.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(iii). As to the meaning of 'court' see PARA 1158 note 3.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(iv). A self-employed barrister who attends court in order to conduct a case in circumstances where no professional client or representative of a professional client is present may, however, if necessary interview witnesses and take proofs of evidence: paras 401(b)(iii), 707. As to barristers' professional clients see PARA 1174. As to the requirement that professional clients attend at court see PARA 1212.

10 As to the meaning of 'solicitor' see PARA 1063 note 14.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(v).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(vi). The reference in the text to acting as a supervisor for the purposes of the provision of immigration advice or immigration services is a reference to acting as a supervisor for the purposes of the Immigration and Asylum Act 1999 s 84(2) (see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 170): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(vi).

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C. EMPLOYED BARRISTERS

1161. Supply of legal services by employed barristers.

An employed barrister¹ whilst acting in the course of his employment may supply legal services² to his employer³ and to any employee, director or company secretary of the employer in a matter arising out of or relating to that person's employment⁴. In addition, a barrister who is employed by a public authority⁵ may also by arrangement⁶ supply legal services to another public authority⁷; a barrister who is employed by or in a government department or agency may supply legal services to any minister or officer of the Crown⁸; a barrister who is, or who is performing the functions of, a justices' clerk⁹ may supply legal services to the justices whom he serves¹⁰; and a barrister who is employed by a trade association¹¹ may supply legal services to any individual member of that association¹².

In general, an employed barrister may supply legal services only to the persons referred to above and must not supply legal services to any other person¹³. This rule is subject to the exceptions that while acting in the course of his employment:

- 1703 (1) a barrister employed by a solicitor or other authorised litigator¹⁴ or by an incorporated solicitors' practice¹⁵ may supply legal services to any client¹⁶ of his employer¹⁷;
- 1704 (2) a barrister employed by the Legal Services Commission¹⁸ may supply legal services to members of the public¹⁹;
- 1705 (3) a barrister employed by a legal advice centre²⁰ may supply legal services to clients of the centre²¹; and
- 1706 (4) any employed barrister may supply legal services to members of the public free of charge²².

1 As to employed barristers see PARA 1037.

2 As to the meaning of 'legal services' see PARA 1152.

3 As to the meaning of 'employer', in the context of an employed barrister, see PARA 1037 note 10.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501(a). As to the Code of Conduct see PARA 1150.

5 For these purposes, 'public authority' includes the Crown, a government department or agency and a local authority: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501(b).

6 Ie where the employer has made arrangements, under statute or otherwise, to supply any legal services or to perform any of that other authority's functions as agent or otherwise: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501(b)(i).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501(b)(i).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501(b)(ii).

9 As to justices' clerks see **MAGISTRATES** vol 29(2) (Reissue) PARA 631 et seq.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501(c).

11 'Trade association' means a body of persons (whether incorporated or not) which is formed for the purpose of furthering the trade interests of its members or of persons represented by its members, and does not include any association formed primarily for the purpose of securing legal assistance for its members: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501(d).

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 502.

14 Ie any person (including a solicitor) who has a right to conduct litigation granted by an authorised body in accordance with the provisions of the Courts and Legal Services Act 1990: s 119(1) (see PARA 495 note 4) (as from a day to be appointed this definition is repealed by the Legal Services Act 2007, ss 208(1), 210, Sch 21, paras 83, 97(1), (2), Sch 23); Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the meaning of 'authorised body' see PARA 1153 note 9. See further PARA 498 et seq.

15 Ie a body recognised under the Administration of Justice Act 1985 s 9: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to incorporated solicitors' practices see PARA 687 et seq.

16 'Client' means lay client or intermediary: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the meaning of 'lay client' see PARA 1155 note 2. 'Intermediary' means any person by whom a self-employed barrister is instructed on behalf of a lay client and includes a professional client who is not also the lay client: para 1001.

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 502(a). See also the Access to Justice Act 1999 s 44, which precludes the Bar Standards Board from imposing a prohibition or limitation on the provision of legal services which would prevent such a barrister from providing legal services to clients of his employer. As from a day to be appointed s 44 is amended by the Legal Services Act 2007, ss 208(1), 210, Sch 21, paras 127, 129(a), Sch 23. In addition, a barrister employed by a foreign lawyer or foreign legal practice may supply legal services to any client of his employer in relation to international work substantially performed outside England and Wales: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe A (International Practice Rules) r 4(d). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). As to the meaning of 'foreign lawyer' see PARA 1154 note 3. As to international work generally see PARA 1164.

18 'Legal Services Commission' means a body established by or under the Access to Justice Act 1999 s 1 or s 2 and includes any body established and maintained by such a body: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the Legal Services Commission see **LEGAL AID** vol 65 (2008) PARA 17 et seq.

19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 502(b). See also the Courts and Legal Services Act 1990 s 31B; and 502. As to the meaning of 'the public' see PARA 1155 note 2.

20 'Legal advice centre' means a centre operated by a charitable or similar non-commercial organisation at which legal services are habitually provided to members of the public without charge (or for a nominal charge) to the client and: (1) which employs or has the services of one or more solicitors; or (2) which has been and remains designated by the Bar Standards Board as suitable for the employment or attendance of barristers subject to such conditions as may be imposed by the Board in relation to insurance or any other matter whatsoever: Code of Conduct of the Bar of England and Wales para 1001.

21 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 502(c).

22 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 502(d).

UPDATE

1161-1162 Supply of legal services by employed barristers, Employed barristers' rights to conduct litigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1161 Supply of legal services by employed barristers

NOTES 14, 17--Day appointed is 1 January 2010: SI 2009/3250.

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1162. Employed barristers' rights to conduct litigation.

The Bar Standards Board¹ is authorised, though not required, by statute to grant to barristers rights to conduct litigation², but it has exercised this power only in respect of employed barristers³, who have a right to conduct litigation in relation to every court⁴ and all proceedings before any court⁵. The right may be exercised by any employed barrister who is entitled to practise as a barrister⁶ and has spent a period of at least 12 weeks working under the supervision of a qualified person⁷, subject to certain additional requirements which apply during the initial period of entitlement to exercise the right⁸.

1 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

2 See the Courts and Legal Services Act 1990 s 28(2)(a)(i), (5)(aa), (5A); and PARA 498. As to the meaning of 'right to conduct litigation' see PARA 1161 note 14. As to rights to conduct litigation see also **COURTS** vol 10 (Reissue) PARAS 331-332.

3 As to employed barristers see PARA 1037. Note that a barrister is eligible to be appointed to the office of Official Solicitor (see the Supreme Court Act 1981 Sch 2 Pt I para 2; and **COURTS** vol 10 (Reissue) PARAS 647-648, 667), who has the right to conduct litigation (see the Supreme Court Act 1981 s 90(3A); and **COURTS** vol 10 (Reissue) PARA 667). As from a day to be appointed, the Supreme Court Act 1981 is renamed the Senior Courts Act 1981: see the Constitutional Reform Act 2005 Sch 11 Pt 1 para 1. At the date at which this volume states the law no such day had been appointed.

4 As to the meaning of 'court' see PARA 1158 note 3.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 504. As to the Code of Conduct see PARA 1150. Any breach of an undertaking given by an employed barrister in the conduct of litigation constitutes professional misconduct: Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 4. As to what constitutes professional misconduct see PARA 1247.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 1(a). As to entitlement to practise as a barrister see PARA 1152 et seq.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 1(b). 'Qualified person' is not defined for the purposes of r 1(b), but cf the definition of 'qualified person' for the purposes of r 1(c) (see note 8). The Bar Standards Board may exempt a person from the requirement contained in r 1(b) on the grounds of his relevant experience: Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 1(b).

8 An employed barrister of less than one year's standing (or three years' standing in the case of a barrister who is supplying litigation services to any person other than a person to whom he is entitled to provide legal services in the course of his employment (see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 501; and PARA 1161)) may exercise the right to conduct litigation only if his principal place of practice is an office which is also the principal place of practice of a qualified person who is able to provide guidance to him: Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 1(c). For these purposes, an employed barrister is treated as being of a particular number of years' standing if he has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations (2007) (see PARAS 1080-1097)) or as a member of another authorised body, has made such practice his primary occupation, and has been entitled to exercise a right to conduct litigation in relation to every court and all proceedings, for a period (which need not be continuous and need not have been as a member of the same authorised body) of at least that number of years: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 2. As to the meaning of 'authorised body' see PARA 1153 note 9. 'Litigation services' are any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right to conduct litigation in

relation to any proceedings, or contemplated proceedings, to provide: Courts and Legal Services Act 1990 s 119(1); Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. 'Proceedings' means proceedings in any court: Courts and Legal Services Act 1990 s 119(1). As to the meaning of 'legal services' see PARA 1152. For the purposes of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 1(c), a person is a qualified person if he: (1) has been entitled to practise and has practised as a barrister (other than as a pupil who has not completed pupillage in accordance with the Consolidated Regulations (2007)) or as a member of another authorised body for a period (which need not have been as a member of the same authorised body) of at least six years in the previous eight years; (2) has for the previous two years made such practice his primary occupation and been entitled to exercise a right to conduct litigation in relation to every court and all proceedings; (3) is not acting as a qualified person in relation to more than two other people; and (4) has not been designated by the Bar Council as unsuitable to be a qualified person: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 3. As to the Consolidated Regulations (2007) see PARA 1060.

In addition, an employed barrister of less than three years' standing may exercise the right to conduct litigation only if he completes at least six hours of continuing professional development on an approved litigation course during any year in which he is required to undertake continuing professional development under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe C (The Continuing Professional Development Regulations) (see PARA 1154): Annexe I (Employed Barristers (Conduct of Litigation) Rules) r 1(d).

UPDATE

1161-1162 Supply of legal services by employed barristers, Employed barristers' rights to conduct litigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1162 Employed barristers' rights to conduct litigation

NOTE 3--Appointed day is 1 October 2009: SI 2009/1604.

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D. EUROPEAN AND INTERNATIONAL PRACTICE

1163. Right to practise in the European Union.

A barrister is entitled to practise before all the national courts of the European Community provided he complies with the local rules and acts in conjunction with a local lawyer¹.

The Code of Conduct of the Bar makes special provision in relation to international practice by barristers² and incorporates the Code of Conduct for Lawyers in the European Union which applies to cross-border activities³.

1 See PARA 534.

2 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe A (International Practice Rules); and PARA 1164. As to the Code of Conduct see PARA 1150.

3 The Code of Conduct for Lawyers in the European Union is annexed to the Code of Conduct of the Bar of England and Wales (8th Edn, 2004): see Annexe Q (The Code of Conduct for European Lawyers); and PARA 1151.

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1164. Rules of conduct applicable to international work.

The Code of Conduct contains special rules which apply to international work¹, that is, practice as a barrister where:

1707 (1) the work relates to matters or proceedings essentially arising, taking place or contemplated outside England and Wales, and is to be substantially performed outside England and Wales²; or

1708 (2) the lay client³ carries on business or usually resides outside England and Wales, the instructions⁴ emanate from outside England and Wales, and the work does not involve the barrister in providing advocacy services⁵.

A barrister undertaking international work must comply with any applicable rule of conduct prescribed by the law or by any national or local Bar of either the place where the work is, or is to be, performed or the place where any proceedings or matters to which the work relates are taking place or contemplated⁶. He is exempted from the rules restricting public access to self-employed barristers⁷ and from the 'cab-rank rule'⁸. In relation to international work which is substantially performed outside England and Wales, the restrictions on the services which a self-employed barrister may supply⁹ are also inapplicable¹⁰; provision with regard to fees¹¹ applies on the basis that the applicable law is that of the place where the work is performed¹²; and a practising barrister may enter into any association, including partnership, with any lawyer other than a member of another authorised body¹³ for the purpose of sharing any office, services or fees¹⁴.

A barrister who is practising as a foreign lawyer¹⁵ and does not give advice on English law¹⁶ or supply legal services¹⁷ in connection with any proceedings or contemplated proceedings in England and Wales, other than as an expert witness on foreign law, is not treated as a practising barrister¹⁸ for the purposes of the Code of Conduct¹⁹, and a practising barrister employed by a foreign lawyer or foreign legal practice may supply legal services to any client²⁰ of his employer²¹.

A practising barrister who supplies legal services as a barrister (other than to his employer) outside England and Wales must be covered by insurance against claims for professional negligence arising out of the supply of his services²².

A barrister who solicits work in any jurisdiction outside England and Wales must not do so in a manner which would be prohibited if the barrister were a member of the local Bar²³.

1 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules). As to the Code of Conduct see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001; Annex A (The International Practice Rules) r 1(a).

3 As to the meaning of 'lay client' see PARA 1155 note 2.

4 'Instructions' means instructions or directions in whatever form (including a brief) given to a practising barrister to supply legal services whether in a contentious or in a non-contentious matter; and 'instructed' has a corresponding meaning: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. 'Brief' means instructions to a barrister to appear as an advocate before a court: para 1001. As to the meaning of

'practising barrister' see PARA 1152 note 2. As to barristers' right to practise see PARA 1152 et seq. As to the meaning of 'legal services' see PARA 1152. As to the meaning of 'court' see PARA 1158 note 3.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001, Annex A (The International Practice Rules) r 1(b). 'Advocacy services' means any services which it would be reasonable to expect a person who is exercising, or contemplating exercising, a right of audience in relation to proceedings, or contemplated proceedings, to provide: Courts and Legal Services Act 1990 s 119(1); Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the meaning of 'proceedings' see PARA 1162 note 8. As to rights of audience see PARAS 1109-1123.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 2. This does not apply, however, if the rule is inconsistent with any requirement of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Pt III (paras 301-307) (see PARAS 1168-1172): Annex A (The International Practice Rules) r 2.

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(a); and PARA 1173. As to self-employed barristers see PARA 1036.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 3. As to the 'cab-rank rule' see PARA 1180.

9 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b): see PARA 1160.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 4(b).

11 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 405: see PARA 1296.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 4(c).

13 As to the meaning of 'authorised body' see PARA 1153 note 9.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 4(a).

15 As to the meaning of 'foreign lawyer' see PARA 1154 note 3.

16 As to the meaning of 'English law' see PARA 1154 note 3.

17 As to the meaning of 'legal services' see PARA 1152.

18 As to the meaning of 'practising barrister' see PARA 1152 note 2.

19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (International Practice Rules) r 4(e). Any barrister whenever called to the Bar who is deemed to be practising on the grounds that he holds himself out or allows himself to be held out as a barrister (ie by virtue of para 201(a)(i) (see PARA 1152)) outside England and Wales and who is not subject to Annex A (The International Practice Rules) r 4(e) is not subject to the rules in the Code of Conduct applying only to practising barristers provided that certain requirements are satisfied: see para 206.2; and PARA 1153 note 6.

20 As to the meaning of 'client' see PARA 1161 note 16.

21 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 4(d).

22 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 6. In the case of an employed barrister his employer must be covered: Annex A (The International Practice Rules) r 6. As to employed barristers and their employers see PARA 1037. Such insurance must be in an amount not less than the minimum level of cover required by law or by the rules of the Bar in the place where the services are supplied or, if there is no such minimum, the current minimum sum insured for barristers practising in England and Wales: Annex A (The International Practice Rules) r 6. The requirements of the Code of Conduct as to professional negligence indemnity insurance (ie para 402.1: see PARA 1239) are inapplicable to such practice: Annex A (International Practice Rules) r 4(b).

23 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex A (The International Practice Rules) r 7.

UPDATE

1164 Rules of conduct applicable to international work

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(4) PROFESSIONAL PRACTICE AND CONDUCT/(ii) Practising Rights/E. FOREIGN LAWYERS/1165. Right to practise deriving from temporary membership of the Bar.

E. FOREIGN LAWYERS

1165. Right to practise deriving from temporary membership of the Bar.

A member of the Bar of Northern Ireland, a member of the Faculty of Advocates in Scotland, other common law practitioner¹, or European lawyer² who is qualified to apply for permanent membership of the Bar³ is also eligible to be admitted to temporary membership of an Inn⁴ and of the Bar for the purpose of conducting a particular case before a court or courts of England and Wales⁵.

A person who is granted such temporary membership is required to give undertakings in his call declaration⁶ that he will not while in England and Wales do anything in relation to the provision of legal services in England and Wales which may not properly be done by a self-employed barrister⁷ in England and Wales⁸, that he will not provide any other legal services⁹ to any person¹⁰, and that he will not, whether in England or Wales or elsewhere, rely on the fact that he is or has been a member of the Bar for any purpose whatsoever other than for the purpose of conducting the relevant case or cases¹¹, as well as an undertaking that he will comply with the Code of Conduct of the Bar¹².

A person temporarily called to the Bar on this basis may not practise as a barrister other than to conduct the case or cases for the purposes of which he was admitted¹³, and his temporary membership automatically ceases on the conclusion of that case or cases¹⁴.

1 Is a legal practitioner in a common law jurisdiction other than England and Wales who has for a period of not less than three years regularly exercised rights of audience in superior courts which administer law which is substantially equivalent to the common law of England and Wales: Consolidated Regulations (2007) reg 36(a) (iii). As to the Consolidated Regulations see PARA 1060.

2 As to the meaning of 'European lawyer' see PARA 535.

3 Is qualified to apply for permanent membership under the Consolidated Regulations (2007) regs 28-34 (European lawyers) (see PARAS 535, 1102-1107) or under reg 36 (Irish, Scottish and other qualified lawyers) (see PARAS 1100-1101): reg 37. For these purposes, such a person is referred to as a 'qualified lawyer': reg 37. As to the Bar as a profession see PARA 1034. As to the requirements for call to the Bar generally see PARAS 1075-1078.

4 As to the meaning of 'Inn' see PARA 1063 note 4.

5 Consolidated Regulations (2007) reg 37. An applicant for temporary membership must obtain a certificate from the Qualifications Committee that he is a qualified lawyer: reg 38. Before issuing such a certificate the Qualifications Committee will normally require to see the applicant's certificate of good standing (see Sch 9) and evidence which establishes that a solicitor or solicitors wish to brief the applicant to appear in the case or cases in respect of which he seeks temporary membership (reg 38). The certification issued by the Qualifications Committee must specify the case or cases in respect of which the applicant seeks temporary membership: reg 38. There is provision for these decisions to be reviewed by the Committee, and for an appeal from such a review to the Visitors of the Inns of Court: see reg 40, Sch 10 para 11. As to the meaning of 'Qualifications Committee' see PARA 1060 note 12. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

6 These are in addition to a number of undertakings broadly corresponding to those contained in the standard call declaration, namely undertakings relating to whether: (1) the applicant has ever been convicted of any relevant criminal offence in any part of the world (Consolidated Regulations (2007) Sch 6 para 3(a)); (2) there are any criminal proceedings pending against him anywhere in respect of any relevant offence (Sch 6

para 3(a)); (3) any bankruptcy order or directors disqualification order has ever been made against him in any part of the world (Sch 6 para 3(b)); (4) he has entered into any individual voluntary arrangement with his creditors (Sch 6 para 3(c)); and (5) he has been prohibited or suspended from practising as a member of any professional body in any part of the world (Sch 6 para 4). As to the meanings of 'relevant criminal offence' and 'bankruptcy order' see PARA 1063 note 13. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq. As to directors disqualification orders see **COMPANIES** vol 15 (2009) PARA 1575 et seq. As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq. The applicant must also declare such further information as may reasonably be regarded as relevant to be considered by the Masters of the Bench in connection with his proposed call: Consolidated Regulations (2007) Sch 6 para 5. The making of a declaration which is false in any material respect, or any breach of any undertaking embodied in the declaration, constitutes professional misconduct: reg 24(c); Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 902. The declarant must declare that he understands this: Consolidated Regulations (2007) Sch 6 para 8. As to the meaning of 'Masters of the Bench' see PARA 1060 note 13.

7 As to self-employed barristers see PARA 1036.

8 Consolidated Regulations (2007) Sch 6 para 1.

9 Is any legal services other than services in connection with the conduct of the case or cases in respect of which he seeks temporary membership of the Bar, or of any other case or cases which he may be specifically authorised in writing by the Qualifications Committee to conduct: Consolidated Regulations (2007) Sch 6 para 2. As to the meaning of 'legal services' see PARA 1152.

10 Consolidated Regulations (2007) Sch 6 para 2.

11 Consolidated Regulations (2007) Sch 6 para 6.

12 Consolidated Regulations (2007) Sch 6 para 7. As to the Code of Conduct and the duty to observe it see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 105; and PARA 1150.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 809.

14 Consolidated Regulations (2007) reg 39(d). Apart from this requirement, signing the call declaration (see regs 24(b)(i), 39(c)) and paying the prescribed fee (see reg 39(b), Sch 10 para 9), a person temporarily admitted is exempt from complying with any other provision of the Consolidated Regulations: reg 39(e).

UPDATE

1165 Right to practise deriving from temporary membership of the Bar

NOTE 5--Appointed day is 1 October 2009: SI 2009/1604.

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1166. Registered European lawyers.

A European lawyer¹ is entitled to be registered as such by the Bar Standards Board² and one of the Inns of Court³, and having been so registered is entitled to carry out under his home professional title⁴ any professional activity that may lawfully be carried out by any other barrister⁵. The Board has made rules as part of the Code of Conduct of the Bar⁶ under which a European lawyer registered as such by the Board may supply legal services⁷, and exercise rights of audience⁸, using his home professional title⁹, subject to certain conditions¹⁰.

A registered European lawyer undertaking professional work in England and Wales must comply with all the provisions of the Code of Conduct as if he were a self-employed barrister¹¹ or an employed barrister¹², as the case may be, and as if references in the Code of Conduct to barristers included references to registered European lawyers¹³. He is exempted, however, from the provisions of the Code of Conduct concerning the requirements that must be satisfied in order to practise as a barrister, exercise rights of audience and supply legal services to the public¹⁴, the provisions restricting direct access and the work which may be undertaken by self-employed barristers¹⁵, and the provisions relating to pupillage¹⁶.

1 As to the meaning of 'European lawyer' see PARA 535.

2 The European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, refer to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

3 As to the registration of European lawyers see PARA 1102. As to the meaning of 'Inn' see PARA 1063 note 4.

4 As to the meaning of 'home professional title' see PARA 1102 note 3. As to the use of a home professional title when practising in England and Wales see the European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 7.

5 European Communities (Lawyer's Practice) Regulations 2000, SI 2000/1119, reg 6(1). Any enactment or rule of law or practice with regard to the carrying out of professional activities by barristers is to be interpreted and applied accordingly: reg 6(1). A registered European lawyer who is in salaried employment may carry out professional activities under his home professional title to the same extent that an employed barrister may do so: reg 6(2). As to employed barristers see PARA 1037. Registered European lawyers may also carry out professional activities in a joint practice with other European lawyers (see regs 8-10), although their rights in connection with the preparation of instruments creating or transferring interests in land or for obtaining title to administer the estate of a deceased person are restricted (see regs 12, 13).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B (The Registered European Lawyers Rules). As to the Code of Conduct see PARA 1150.

7 As to the meaning of 'legal services' see PARA 1152.

8 As to the rights of audience of registered European lawyers see PARA 537.

9 A registered European lawyer must in connection with all professional work undertaken in England and Wales use his home professional title, indicate the name of his home professional body or the court before which he is entitled to practise in the relevant member state, and indicate that he is registered with the Bar Standards Board as a European lawyer: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B (The Registered European Lawyers Rules) r 4.

10 The conditions are:

- 544 (1) that he has a current practising certificate issued by the Bar Standards Board in accordance with the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe D (The Practising Certificate Regulations) (see PARA 1155) (Annexe B (The Registered European Lawyers Rules) r 5(1));
- 545 (2) that, if he supplies legal services to the public, he is covered by insurance against claims for professional negligence arising out of the supply of his services in England and Wales in such amount and upon such terms as are required by the Bar Council and has delivered to the Board a copy of the current insurance policy or the current certificate in insurance issued by the insurer (Annexe B (Registered European Lawyers Rules) r 5(2)), although he may apply to be exempt from this requirement (see the Consolidated Regulations (2007) reg 28(f)); and for this purpose a European lawyer so practising is exempt from the provisions of the Code of Conduct relating to professional insurance (ie the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 402 (see PARA 1239)) (Annexe B (Registered European Lawyers Rules) r 6)); and
- 546 (3) that where the professional activities in question may be lawfully provided only by a solicitor or barrister, he acts in conjunction with a solicitor or barrister who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully provide those professional activities (Annexe B (Registered European Lawyers Rules) r 5(3)).

As to the meaning of 'the public' see PARA 1155 note 2. As to the Consolidated Regulations see PARA 1060.

11 As to self-employed barristers see PARA 1036.

12 As to employed barristers and their employers see PARA 1037.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B (Registered European Lawyers Rules) r 6. Where the registered European lawyer is practising in chambers, the head of chambers or whichever member is responsible for the administration of chambers, has a responsibility for enforcing this requirement: see para 404.2(h); and PARA 1241. As to the meaning of 'chambers' see PARA 1153 note 5.

14 Ie the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 201-204: see PARAS 1152-1159.

15 Ie the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401: see PARAS 1160, 1173, 1175.

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex B (Registered European Lawyers Rules) r 6. The requirements of the Code of Conduct relating to pupils and pupillage are contained in paras 801-805: see PARAS 1080 et seq.

UPDATE

1166 Registered European lawyers

NOTES 6, 9, 10, 13--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe B amended on 1 September 2009.

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1167. Other foreign lawyers.

A foreign lawyer¹ (other than a registered European lawyer²) may be permitted to practise from a barrister's chambers³, in which case he is required to give a written undertaking that he will comply with the Code of Conduct of the Bar as is he were a self-employed barrister⁴, except in so far as any requirement of the Code of Conduct conflicts with the rules of his own profession⁵.

1 As to the meaning of 'foreign lawyer' see PARA 1154 note 3.

2 As to the meaning of 'registered European lawyer' see PARA 1102 note 7.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex H (The Foreign Lawyers (Chambers) Rules) rr 1(a), 4. As to the Code of Conduct see PARA 1150. As to the meaning of 'chambers' see PARA 1153 note 5. As to the conditions on which a foreign lawyer may be permitted to practise from chambers see PARA 1242. A registered European lawyer is also prohibited from being a member of chambers: Annex H (The Foreign Lawyers (Chambers) Rules) r 4.

4 As to self-employed barristers see PARA 1036.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex H (The Foreign Lawyers (Chambers) Rules) r 1(a). As to these rules see further PARA 1242. The head of chambers or whichever member is responsible for the administration of chambers, has a responsibility for enforcing this requirement: see para 404.2(h); and PARA 1241.

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(iii) Fundamental Principles

1168. Barristers' duties.

Certain duties set out in the Code of Conduct of the Bar are classified as 'fundamental principles'¹. Foremost of these is the general duty, which applies to every barrister, whether practising or not², not to engage in any conduct, whether in pursuit of his profession or otherwise, which is:

- 1709 (1) dishonest or otherwise discreditable to a barrister³;
- 1710 (2) prejudicial to the administration of justice⁴; or
- 1711 (3) likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute⁵.

As a corollary to this duty, a barrister must not engage in any occupation if his association with that occupation may adversely affect the reputation of the Bar or, in the case of a practising barrister, prejudice his ability to attend properly to his practice⁶.

¹ See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Pt III (paras 301-307); and PARAS 1169-1172. As to the Code of Conduct see PARA 1150.

² As to the meaning of 'practising barrister' see PARA 1152 note 2.

³ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 301(a)(i).

⁴ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 301(a)(ii).

⁵ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 301(a)(iii).

⁶ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 301(b).

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1169. Overriding duty to the court.

A practising barrister¹ has an overriding duty to the court² to act with independence in the interests of justice³. He must assist the court in the administration of justice and must not deceive or knowingly or recklessly mislead the court⁴.

Further examples of the duty to the court are the responsibilities of counsel to conduct proceedings economically⁵, to bring all relevant authorities to the attention of the court whether or not they assist the party for whom he appears⁶, to bring to the attention of the court any procedural irregularity which occurs during the course of the trial⁷, to ensure that the court is not invited to enforce an illegal transaction⁸, and not to make allegations of dishonesty without a proper basis to support them⁹.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2.

2 As to the meaning of 'court' see PARA 1158 note 3.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 302. As to the Code of Conduct see PARA 1150. This duty has been given statutory force in relation to every person who exercises before any court a right of audience granted by an authorised body: see the Courts and Legal Services Act 1990 s 27(2A)(a) (added by the Access to Justice Act 1999 s 42(1); prospectively repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 21, paras 83, 84(d), Sch 23). As to the meaning of 'authorised body' see PARA 1153 note 9. As from a day to be appointed a person who exercises before any court a right of audience, or conducts litigation in relation to proceedings in any court, by virtue of being an authorised person in relation to the activity in question, has a duty to the court in question to act with independence in the interests of justice: see the Legal Services Act 2007 s 188(1), (2). This duty overrides any obligations which the person may have (otherwise than under the criminal law) if they are inconsistent with them: see s 188(3). At the date at which this volume states the law no such day had been appointed. See also para 513. As to the meaning of 'authorised person' see PARA 515.

The duty is also recognised at common law: see eg *Rondel v Worsley* [1969] 1 AC 191 at 227, [1967] 3 All ER 993 at 998, HL, per Lord Reid; *Abse v Smith* [1986] QB 536 at 546, [1986] 1 All ER 350 at 354, CA, per Sir John Donaldson MR; and see *Beevis v Dawson* [1957] 1 QB 195 at 201, [1956] 3 All ER 837 at 839, CA, per Singleton LJ; *Arthur JS Hall & Co (a firm) v Simons* [2002] 1 AC 615 at 686, [2000] 3 All ER 673 at 687, HL, per Lord Hoffmann; *Geveran Trading Co Ltd v Skjevesland* [2002] EWCA Civ 1567 at [37], [2003] 1 All ER 1 at [37] per Arden LJ. See also *Saif Ali v Sydney Mitchell & Co* [1980] AC 198 at 219, [1978] 3 All ER 1033 at 1042, HL, per Lord Diplock. As to the duty of counsel in civil proceedings in making an application without notice see *Memory Corpn plc v Sidhu* [2000] 1 WLR 1443, [2000] FSR 921, per Mummery LJ. As to the duty of counsel in legally aided cases see *Kelly v London Transport Executive* [1982] 2 All ER 842 at 850-851, [1982] 1 WLR 1055 at 1064-1065, CA, per Lord Denning MR. See also *Orchard v South Eastern Electricity Board* [1987] QB 565 at 571, [1987] 1 All ER 95 at 99, CA, per Lord Donaldson MR; and **LEGAL AID**.

The duty does not, in civil proceedings, require a barrister to disclose evidence favourable to the other side: *Khudados v Hayden* [2007] EWCA Civ 1316, [2007] All ER (D) 203 (Dec).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 302. As to the duty not to mislead the court see *Re Cooke* (1889) 5 TLR 407, CA; *Rondel v Worsley* [1969] 1 AC 191 at 227, [1967] 3 All ER 993 at 998, HL, per Lord Reid; *Saif Ali v Sydney Mitchell & Co* [1980] AC 198 at 219, [1978] 3 All ER 1033 at 1042, HL, per Lord Diplock; *Vernon v Bosley (No 2)* [1999] QB 18, [1997] 1 All ER 614, CA. This may be a ground for ordering a new trial: *Meek v Fleming* [1961] 2 QB 366, [1961] 3 All ER 148, CA (barrister knowingly suppressed evidence of client police officer's demotion for misconduct; retrial ordered; the barrister was subsequently disciplined by his Inn); cf *Tombling v Universal Bulb Co Ltd* [1951] WN 247, [1951] 2 TLR 289, CA (fact that a witness had come from prison to give evidence not mentioned by counsel; retrial refused).

5 See PARA 1211; and *Geveran Trading Co Ltd v Skjevesland* [2002] EWCA Civ 1567 at [37], [2003] 1 All ER 1 at [37] per Arden LJ.

6 See PARA 1210; and *Glebe Sugar Refining Co Ltd v Greenock Port and Harbours Trustees* [1921] 2 AC 66, HL. Although, at time before case reports were available on the internet, the Court of Appeal stated that if a case is listed for trial at a place where there is insufficient access to authorities, it is counsel's responsibility to alert the court and to seek to get the case transferred to a court where the necessary material can be made available: *R v Madden* [1975] 3 All ER 155 at 157, [1975] 1 WLR 1379 at 1382 per James LJ. Current practice demands that counsel provide the court with photocopies of the authorities on which he relies. For a barrister's duty to keep himself up to date with all authorities relevant to the field in which he holds himself out to be competent see *Copeland v Smith* [2000] 1 All ER 457, [2000] 1 WLR 1371, CA.

7 See PARA 1210.

8 See *Mercantile Credit Co Ltd v Hamblin* [1964] 1 All ER 680n, [1964] 1 WLR 423n; affd [1965] 2 QB 242, [1964] 3 All ER 592, CA.

9 See PARAS 1204, 1210.

UPDATE

1169 Overriding duty to the court

NOTE 3--Day appointed is 1 January 2010: SI 2009/3250.

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1170. Duty to the lay client.

Subject only to his duty to the court¹, a practising barrister² must promote and protect fearlessly and by all proper and lawful means the best interests of his lay client³, and do this without regard to his own interests or to any consequences to himself or to any other person⁴. As between the lay client and any professional client or other intermediary, the barrister's primary duty is owed to the lay client, and he must not permit the intermediary to limit his discretion as to how the interests of the lay client can best be served⁵.

1 As to the meaning of 'court' see PARA 1158 note 3. As to a barrister's duty to the court, see PARA 1169.

2 As to the meaning of 'practising barrister' see PARA 1152 note 2.

3 As to the meaning of 'lay client' see PARA 1155 note 2.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 303(a). 'Any other person' specifically includes any professional client or other intermediary or another barrister: para 303(a). As to the Code of Conduct see PARA 1150. As to professional clients see PARA 1174. As to the meaning of 'intermediary' see PARA 1161 note 16. As to counsel's duty to his client see further *Rondel v Worsley* [1969] 1 AC 191 at 227, [1967] 3 All ER 993 at 998, HL, per Lord Reid; *Tomblin v Universal Bulb Co Ltd* [1951] 2 TLR 289 at 297, CA, per Denning LJ; *Butt v Jackson* (1846) 10 ILR 120; *Abse v Smith* [1986] QB 536 at 546, [1986] 1 All ER 350 at 354, CA, per Sir John Donaldson MR.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 303(b). When supplying legal services funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service (as to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq), a barrister owes his primary duty to the lay client subject only to the requirement that he must in connection with the supply of such services comply with any duty imposed on him by or under the Access to Justice Act 1999 or any regulations or code in effect under that Act (see **LEGAL AID**) and in particular with the duties set out in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe E (Guidelines on Opinions under the Funding Code): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 303(c), 304. As to the meaning of 'Legal Services Commission' see PARA 1161 note 18.

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1171. Independence and responsibility.

A practising barrister¹ must not:

- 1712 (1) permit his absolute independence, integrity and freedom from external pressures to be compromised²;
- 1713 (2) do anything (for example, accept a present) in such circumstances as may lead to any inference that his independence may be compromised³;
- 1714 (3) compromise his professional standards in order to please his client⁴, the court⁵, or a third party, including any mediator⁶;
- 1715 (4) give a commission or present or lend any money for any professional purpose to, or accept any money by way of loan or otherwise from, any client or any person entitled to instruct him as an intermediary⁷;
- 1716 (5) make any payment to any person for the purpose of procuring professional instructions⁸; or
- 1717 (6) receive or handle client money, securities or other assets other than by receiving payment of remuneration or (in the case of an employed barrister) where the money or other asset belongs to his employer⁹.

A barrister is individually and personally responsible for his own conduct and for his professional work, and must exercise his own personal judgment in all his professional activities¹⁰.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 307(a). As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 307(b). A barrister should refrain from becoming personally involved in a case in any way. Thus a barrister who has been engaged in a criminal defence should not in any ordinary circumstances act as surety for his client (Annual Statement 1933 p 9); nor should he lobby members of Parliament about the dismissal of a client from public employment following a conviction (Annual Statement 1938 p 10); nor sign a petition or otherwise take part publicly in movements for a reprieve (Annual Statement 1935 p 6); nor attend an identification parade in a case in which he is or may be professionally engaged (Annual Statement 1932 p 2); nor offer to pay his client's contribution for a legal aid certificate (Annual Statement 1971-72 p 33).

4 As to the meaning of 'client' see PARA 1161 note 16.

5 As to the meaning of 'court' see PARA 1158 note 3.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 307(c).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 307(d). This rule does not prevent a barrister from accepting money as a remuneration in accordance with the provisions of the Code of Conduct: para 307(d). As to barristers' remuneration see PARAS 1293-1316.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 307(e). This rule does not prevent a barrister from making a payment for advertising or publicity permitted by the Code of Conduct (see PARA 1216) or, in the case of a self-employed barrister, by way of remuneration paid to any clerk or other employee or staff of his chambers: para 307(e). As to self-employed barristers see PARA 1036.

Nothing in para 307(d) (see text and note 7) or (e) prevents a barrister from paying a reasonable fee or fees required by an alternative dispute resolution body that appoints or recommends persons to provide mediation, arbitration or adjudication services, or from entering into such a reasonable fee-sharing arrangement required by such a body, if the payment or arrangement is of a kind similar to that made by other persons who provide such services through the body: para 307(e).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 307(f). As to employed barristers and their employers see [PARA 1037](#).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 306.

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1172. Duty not to discriminate.

As a matter of professional conduct a practising barrister¹ must not in relation to any other person² discriminate directly or indirectly or victimise because of race, colour, ethnic or national origin, nationality, citizenship, sex, sexual orientation, marital status, disability, religion or political persuasion³.

In addition it is unlawful for a barrister, in the provision of his professional services, or for a barrister or a barrister's clerk in offering, or omitting to offer, a pupillage or tenancy, or in administering or terminating a pupillage or tenancy, to discriminate in any way against a woman⁴ or against any person on grounds of race⁵ or disability⁶. It is also unlawful for a barrister or a barrister's clerk to subject to harassment a person who is, or has applied to be, a pupil or a tenant⁷.

The Bar Standards Board Equality and Diversity Code sets out the law and professional rules which prohibit discrimination and recommends good practice to chambers in relation to the provision of services⁸.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2.

2 This includes a client or another barrister or a pupil or a student member of an Inn of Court: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 305.1. As to the Code of Conduct see PARA 1150. As to the meaning of 'client' see PARA 1161 note 16. As to students and pupils see PARA 1063 et seq.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 305.1, 305.2. There is particular provision relating to discrimination on grounds of age in connection with the offer of pupilages: see PARA 1095. As to discrimination generally see **DISCRIMINATION**.

4 See the Sex Discrimination Act 1975 s 29, s 35A(1), (2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 382, 374. As to what constitutes discrimination against a woman see ss 1-5; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344 et seq.

5 See the Race Relations Act 1976 s 20, s 26A(1), (2); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 456, 461. As to what constitutes racial discrimination see ss 1-3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq.

6 See the Disability Discrimination Act 1995 s 7A(1), (2), s 19; and **DISCRIMINATION** (2007 Reissue) PARAS 547, 582 et seq. As to what constitutes disability discrimination see ss 1-3, 3A; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 et seq. Barristers and their clerks are under a duty to make adjustments to any provision, criterion or practice they apply, or any physical feature of premises they occupy, which disadvantages disabled persons applying for pupilages or tenancies: see s 7B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 548.

7 See the Sex Discrimination Act 1975 s 35A(2A); the Race Relations Act 1976 s 26A(3A); the Disability Discrimination Act 1995 s 7A(3); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 374, 456, 547. As to what constitutes harassment for these purposes see the Sex Discrimination Act 1975 s 4A; the Race Relations Act 1976 s 3A; the Disability Discrimination Act 1995 s 3B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 347, 444, 533.

8 See the Equality and Diversity Code for the Bar (approved 17 July 2004).

UPDATE

1172 Duty not to discriminate

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(iv) Instructions

A. SELF-EMPLOYED BARRISTERS

1173. Instruction of self-employed barristers.

There is no rule of law which prevents a self-employed barrister¹ from accepting instructions² directly from a member of the public³, or from entering into a contract with a lay client⁴ for the provision of his services as a barrister⁵. Until recently, however, the professional rules of the Bar⁶ prohibited a self-employed barrister from accepting instructions from, or entering into a contract for the supply of legal services by him with, any person other than a professional client⁷. The principal reason for this restriction was to allow barristers to specialise in their characteristic work of advocacy, drafting and advising, and to ensure that, so far as possible, the facts of a case were accurately ascertained before proceedings were instituted or advice was given⁸.

The restriction has now been relaxed⁹. Under the current rule, a self-employed barrister may generally supply legal services¹⁰ only if he is appointed by the court¹¹ or is instructed by a professional client¹² or by a licensed access client¹³; but, in addition, provided that he is of more than three years' standing¹⁴, that he has complied with such training requirements as may be notified by the Bar Standards Board¹⁵ and that he notifies the Board that he holds himself out as willing to accept instructions from lay clients, a self-employed barrister may supply legal services by or on behalf of any other lay client¹⁶. This rule does not extend to international work¹⁷ or to the supply of legal services on a voluntary or part-time basis at a legal advice centre¹⁸.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'instructions' see PARA 1164 note 4.

3 See *Doe d Bennet v Hale* (1850) 15 QB 171. See also *Hobart v Butler* (1859) 9 ICLR 157 at 172; *Thompson v Maskery* (1882) 73 LT Jo 401; *Re T (a barrister)* [1982] QB 430, [1981] 2 All ER 1105; *R v Visitors to the Inns of Court, ex p Calder* [1994] QB 1, [1993] 2 All ER 876, CA. As to the abandonment of direct instruction see PARA 1038. As to the meaning of 'the public' see PARA 1155 note 2.

4 As to the meaning of 'lay client' see PARA 1155 note 2.

5 See the Courts and Legal Services Act 1990 s 61(1); and PARA 1293.

6 Ie the rules set out in previous editions of the Code of Conduct of the Bar. As to the Code of Conduct see PARA 1150.

7 As to the meaning of 'professional client' see PARA 1174. The requirement that a barrister be instructed by a professional client has been held not to be an interference with the right to freedom of expression conferred by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmnd 8969) art 10 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 158 et seq): see *Prince v United Kingdom* (1984) 6 EHRR 583, EComHR.

8 'In contentious business which frequently affects the rights of other persons, it is most important that the facts should be, as far as possible, accurately ascertained before advice is given. For this purpose a barrister cannot himself make proper inquiry as to the actual facts; it is essential that he should be able to rely on the

responsibility of a solicitor as to the statement of facts put before him' (extract from a memorandum by the Attorney General, Sir Richard Webster, reproduced in (1888) 85 LT Jo 176).

9 Amendments to the Code of Conduct allowing self-employed barristers to accept instructions directly from members of the public on certain conditions came into effect on 6 July 2004.

10 As to the meaning of 'legal services' see PARA 1152.

11 As to the meaning of 'court' see PARA 1158 note 3.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(a)(i).

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(a)(ii). 'Licensed access client' means a person or organisation approved as such by the Bar Council in accordance with Annexe F1 (The Licensed Access Rules and Recognition Regulations): para 1001. As to instruction by licensed access clients see PARA 1175.

14 As to when a barrister is treated as being of a particular number of years' standing see PARA 1158 note 3.

15 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

16 Conduct of the Bar of England and Wales (8th Edn, 2004) paras 204(c), 401(a)(iii). In such a case the barrister must comply with Annexe F2 (The Public Access Rules): para 401(a)(iii). See further PARA 1176.

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe A (International Practice Rules) r 3. As to international work see PARA 1164.

18 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 401(c), 806. A self-employed barrister who supplies legal services on a voluntary or part-time basis at a legal advice centre is treated for the purposes of the Code of Conduct as if he were employed at the centre: see para 806. As to the meaning of 'legal advice centre' see PARA 1161 note 20.

UPDATE

1173 Instruction of self-employed barristers

NOTE 13--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 amended on 1 November 2009.

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1174. Professional client.

For the purposes of the Code of Conduct of the Bar, a 'professional client' is a solicitor¹ or other professional person by whom a self-employed barrister² is instructed³, that is to say:

- 1718 (1) a solicitor, authorised litigator⁴, parliamentary agent⁵, patent agent or European Patent Attorney⁶, trade mark agent⁷, notary⁸ or a European lawyer registered⁹ with the Law Society of England and Wales¹⁰;
- 1719 (2) a licensed conveyancer in a matter in which the licensed conveyancer is providing conveyancing services¹¹;
- 1720 (3) an employed barrister¹² or registered European lawyer¹³;
- 1721 (4) any practising barrister¹⁴ or registered European lawyer acting on his own behalf¹⁵;
- 1722 (5) a foreign lawyer¹⁶ in a matter which does not involve the barrister supplying advocacy services¹⁷;
- 1723 (6) a Scottish or Northern Irish solicitor¹⁸;
- 1724 (7) the representative of any body which arranges for the supply of legal services¹⁹ to the public without a fee²⁰.

1 As to the meaning of 'solicitor' see PARA 1063 note 14.

2 As to self-employed barristers see PARA 1036.

3 As to the meaning of 'instructed' see PARA 1164 note 4.

4 As to the meaning of 'authorised litigator' see PARA 1161 note 14.

5 As to parliamentary agents see **PARLIAMENT** vol 34 (Reissue) PARAS 848-849.

6 As to patent agents and European Patent Attorneys see **PATENTS AND REGISTERED DESIGNS**.

7 As to trade mark agents see **TRADE MARKS AND TRADE NAMES** vol 48 (2007 Reissue) PARA 32 et seq.

8 As to notaries see PARA 1412 et seq.

9 As to the meaning of 'European lawyer' see PARA 535; and as to the meaning of 'registered European lawyer' see PARA 1102 note 7. As to a registered European lawyer's right to practise in England and Wales see PARA 1166.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the registration of foreign lawyers with the Law Society see PARA 534 et seq. As to the Code of Conduct see PARA 1150.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to conveyancing services, licensed conveyancing and licensed conveyancers see PARA 1319 et seq.

12 As to employed barristers see PARA 1037.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

14 As to the meaning of 'practising barrister' see PARA 1152 note 2.

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

16 As to the meaning of 'foreign lawyer' see PARA 1154 note 3.

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the meaning of 'advocacy services' see PARA 1164 note 5.

18 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001.

19 As to the meaning of 'legal services' see PARA 1152.

20 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. In order to be eligible to instruct a self-employed barrister, such a body (eg a legal advice centre or pro bono or free representation unit) must have been, and must remain, designated by the Bar Council (subject to such conditions as may be imposed by the Bar Council in relation to insurance or any other matter whatsoever) as suitable for the instruction of barristers, and must instruct a barrister to supply legal services without a fee: para 1001. As to the meaning of 'legal advice centre' see PARA 1161 note 20. As to the meaning of 'Bar Council' see PARA 1042 note 1.

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1175. Licensed access.

A self-employed barrister¹ may accept instructions² in relation to certain matters from persons and organisations who have been approved as authorised licensed access clients³ by the Bar Council⁴.

Members of designated professional bodies are deemed to be authorised licensed access clients⁵, as are arbitrators⁶ and certain ombudsmen⁷. The Access to the Bar Committee⁸ may also approve any other person or organisation, on the application of that person or organisation or otherwise, and on such terms as the committee may think appropriate, as an authorised licensed access client⁹.

A barrister who is instructed by a licensed access client must comply with the Licensed Access Rules¹⁰. These Rules require a barrister who accepts instructions from a licensed access client promptly to send him a statement in writing confirming the terms on which the instructions have been accepted¹¹, to advise the licensed access client forthwith if at any stage he considers it in the interests of the lay client or in the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary be instructed either together with or in place of the barrister¹², and to keep a case record and copies of various documents¹³.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'instructed' see PARA 1164 note 4.

3 As to the meaning of 'licensed access client' see PARA 1173 note 13.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(a)(ii). As to the Code of Conduct see PARA 1150. As to the meaning of 'Bar Council' see PARA 1042 note 1. A self-employed barrister may accept instructions from a licensed access client only in circumstances authorised in relation to that client by the Licensed Access Recognition Regulations, whether that client is acting for himself or for another: Annexe F1 (The Licensed Access Rules) r 1. As to the Licensed Access Recognition Regulations see Annexe F1 (The Licensed Access Recognition Regulations). The barrister may accept instructions only if at the time of giving instructions the licensed access client is identified and sends the barrister a copy of the licence issued by the Access to the Bar Committee: Annexe F1 (The Licensed Access Rules) r 3. In addition, a barrister must not accept instructions from a licensed access client unless he and his chambers are able to provide the services required of them by that licensed access client or if the barrister considers it in the interests of the lay client or the interests of justice that a solicitor or other authorised litigator or some other appropriate intermediary be instructed either together with or in place of the barrister: Annexe F1 (The Licensed Access Rules) r 4. As to the meaning of 'chambers' see PARA 1153 note 5. As to the meaning of 'lay client' see PARA 1155 note 2. As to the meaning of 'solicitor' see PARA 1063 note 14. As to the meaning of 'authorised litigator' see PARA 1161 note 14. As to the meaning of 'intermediary' see PARA 1161 note 16. As to the Code of Conduct see PARA 1150.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) reg 7. The designated professional bodies are: the Association of Authorised Public Accountants; the Association of Taxation Technicians; the Association of Chartered Certified Accountants; the Chartered Institute of Management Accountants; the Institute of Chartered Accountants in England and Wales; the Institute of Chartered Accountants in Ireland; the Institute of Chartered Accountants of Scotland; the Chartered Institute of Taxation; the Institute of Financial Accountants; the Institute of Indirect Taxation; the Insolvency Practitioners Association; the Architects Registration Board; the Architects and Surveyors Institute; the Association of Consultant Architects; the Royal Institute of British Architects; the Royal Institution of Chartered Surveyors; the Royal Town Planning Institute; the Institution of Chemical Engineers; the Institution of Civil Engineering Surveyors; the Institution of Civil Engineers; the Institution of Electrical Engineers; the Institution of Mechanical Engineers; the Institution of Structural Engineers; the Incorporated Society of Valuers & Auctioneers; the Faculty of Actuaries; the Institute of Actuaries; the Institute of Chartered Secretaries and

Administrators; the Association of Average Adjusters; the Chartered Institute of Loss Adjusters; and the Chartered Insurance Institute: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) Sch 1. The regulations refer to the Institute of Direct Taxation, but it is assumed that the Institute of Indirect Taxation is intended. They also refer to the Chartered Association of Certified Accountants which body has been renamed the Association of Chartered Certified Accountants; and the Architects Registration Council of the United Kingdom which body has been renamed the Architects Registration Board (see the Housing Grants, Reconstruction and Development Act 1996 s 118(1) (repealed); and **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 226 et seq). Members of these bodies are authorised only in matters of a kind which fall generally within the professional expertise of the members of the relevant body, and are not authorised for the purpose of briefing counsel to appear in or exercise any right of audience before the Judicial Committee of the House of Lords, the Privy Council, the Supreme Court, the Crown Court, a county court, or the Employment Appeals Tribunal: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) reg 7. Subject to this, the authorisation extends to matters concerning the member's clients or customers: Annexe F1 (The Licensed Access Recognition Regulations) reg 7. As to the meaning of 'right of audience', and as to barristers' rights of audience before the courts mentioned, see PARA 1109 et seq. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) reg 8(a). An arbitrator for these purposes includes an adjudicator under the Housing Grants, Construction and Regeneration Act 1996: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) reg 8(a). An arbitrator (or adjudicator) is authorised only when instructing counsel for the purpose of advising on any point of law, practice or procedure arising in or connected with an arbitration or adjudication in which he has been or may be appointed: Annexe F1 (The Licensed Access Recognition Regulations) reg 8(a). As to arbitrators see generally **ARBITRATION**. As to adjudicators under the Housing Grants, Construction and Regeneration Act 1996 see s 108; and **BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS** vol 4(3) (Reissue) PARA 207 et seq.

7 Is any person who has been appointed to one of the following offices: Parliamentary Commissioner for Administration (see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARAS 41-44); Commissioner for Local Administration (England) or Commissioner for Local Administration (Wales) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 839 et seq); Health Service Commissioner (see **HEALTH SERVICES** vol 54 (2008) PARA 461 et seq); and Legal Services Ombudsman (see PARA 1252): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) reg 8(b), Sch 2 paras 1-4, 9. The regulations also provide that the holders of the offices of Banking Ombudsman, Building Society Ombudsman, Insurance Ombudsman and Personal Investment Authority Ombudsman are deemed to be licensed access clients (see Annexe F1 (The Licensed Access Recognition Regulations) reg 8(b), Sch 2 paras 5-8), although these offices have now been subsumed within the Financial Ombudsman Service (see the Financial Services and Markets Act 2000 Pt XVI (ss 225-234A); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 575 et seq), to which Annexe F1 does not refer. A person mentioned above is authorised only when instructing counsel for the purpose of advising on any point of law, practice or procedure arising in the course of the performance of his duties: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) reg 8(b).

8 Is the Committee of the Bar Standards Board with responsibility for authorising persons as licensed access clients and for administering the licensed access scheme.

9 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Recognition Regulations) regs 2-6, 9. 'Authorised licensed access clients' are those persons and organisations, their members, and their, or their members', employees, who have from time to time been approved as such by the Access to the Bar Committee: Annexe F1 (The Licensed Access Recognition Regulations) reg 1. The committee issues a licence to every person or organisation approved as an authorised direct access client: Annexe F1 (The Licensed Access Recognition Regulations) reg 4.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(a)(ii). As to the Licensed Access Rules see Annexe F1 (The Licensed Access Rules).

11 See Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Rules) r 6(a)(i). A barrister who accepts instructions from a licensed access client otherwise than on the terms of the Licensed Access Terms of Work as approved from time to time by the Access to the Bar Committee must first agree in writing the terms upon which he has agreed to do the work and the basis upon which he is to be paid, and must keep a copy of the agreement in writing with the licensed access client setting out the terms upon which he has agreed to do the work and the basis upon which he is to be paid: Annexe F1 (The Licensed Access Rules) r 5. Unless the instructions are on the terms of the Licensed Access Terms of Work, the barrister must at the same time advise the client in writing of the effect of para 401, the fact that the barrister cannot be expected to perform the functions of a solicitor or other authorised litigator (in particular that he cannot be

expected to fulfil limitation obligations, disclosure obligations and other obligations arising out of the conduct of litigation), and the fact that circumstances may require the client to retain a solicitor or other authorised litigator at short notice and possibly during the case: Annexe F1 (The Licensed Access Rules) r 6(b). As to the restrictions imposed by para 401 on the services which a self-employed barrister may supply see PARA 1160.

If at any stage a barrister who is instructed by a licensed access client considers that there are substantial grounds for believing that the licensed access client has in some significant respect failed to comply either with the terms of the licence granted by the Access to the Bar Committee or (where applicable) with the terms of the Licensed Access Terms of Work, the barrister must forthwith report the facts to the Access to the Bar Committee: Annexe F1 (The Licensed Access Rules) r 8.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Rules) r 7(a). Unless a solicitor or other authorised litigator or other appropriate intermediary is instructed as soon as reasonably practicable after the giving of such advice, the barrister must cease to act and must return any instructions: Annexe F1 (The Licensed Access Rules) r 7(b).

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 (The Licensed Access Rules) rr 9, 10.

UPDATE

1175 Licensed access

TEXT AND NOTES--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F1 amended on 1 November 2009.

NOTE 5--Appointed day is 1 October 2009: SI 2009/1604.

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1176. Public access.

A self-employed barrister¹ who satisfies certain conditions² may as a general rule accept instructions³ directly from any lay client⁴, although a barrister may not accept direct instructions from or on behalf of a lay client in, or in connection with, any matter or proceedings concerning immigration or asylum, any family business⁵ or family proceedings⁶, or any criminal cause or matter, unless certain requirements as to the nature of those instructions are satisfied⁷. In any case where a barrister is not prohibited from accepting instructions, it is a matter for consideration in the circumstances of the case whether it is in the best interests of the client or in the interests of justice for the lay client to instruct a solicitor⁸ or other professional client⁹.

A barrister who accepts public access instructions must forthwith notify his lay client in writing, and in clear and readily understandable terms, of the work which he has agreed to perform¹⁰ and of the various conditions on which such work must be undertaken¹¹. The barrister must keep a case record which sets out specified information¹² and must retain for at least seven years after the date of the last item of work done copies of various documents¹³. Save where otherwise agreed, the barrister is entitled to copy all documents received from the lay client and to retain such copies permanently¹⁴, must return all documents received from his lay client on demand, whether or not the barrister has been paid for any work done for the lay client¹⁵, and is not required to deliver to his lay client any documents drafted by the barrister in advance of receiving payment from the lay client for all work done for that client¹⁶.

A barrister who has accepted public access instructions in any matter may take a proof of evidence from his client in that matter¹⁷.

1 As to self-employed barristers see PARA 1036.

2 For these conditions see Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 204(c); and PARA 1173. As to the Code of Conduct see PARA 1150.

3 As to the meaning of 'instructions' see PARA 1164 note 4.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(a)(iii); and see PARA 1173. Instructions given to a barrister by or on behalf of a lay client pursuant to this provision are known as 'public access instructions': para 1001. As to the meaning of 'lay client' see PARA 1155 note 2. A self-employed barrister who accepts instructions directly from a lay client must comply with the Public Access Rules (see Annexe F2 (The Public Access Rules)): para 401(a)(iii).

5 As to the meaning of 'family business' see the Matrimonial and Family Proceedings Act 1984 s 32; and **COURTS** vol 10 (Reissue) PARA 576 (definition applied by virtue of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 3(2)(a)).

6 As to the meaning of 'family proceedings' see the Matrimonial and Family Proceedings Act 1984 s 32 (see **COURTS** vol 10 (Reissue) PARA 576); the Magistrates' Courts Act 1980 s 65 (see **MAGISTRATES** vol 29(2) (Reissue) PARA 739); and the Children Act 1989 s 8(3)-(5) (see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) PARA 199) (definition applied by virtue of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 3(2)(a)).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 3. The requirements are: (1) that the barrister is instructed by the lay client and not by or through an intermediary on behalf of the lay client; and (2) that the barrister is instructed solely: (a) to provide advice or draft documents (but not to attend interviews conducted by prosecuting or investigating authorities) other than in

connection with proceedings which have been commenced (ie when the defendant is charged or a summons is issued); or (b) in, or in connection with, proceedings before the European Court of Human Rights or the Courts of the European Communities, on appeal to the House of Lords or the Privy Council, on appeal to the Court of Appeal (provided that there is no reason to believe that any party to the proceedings will seek to adduce new evidence), on appeal to the High Court by way of case stated by a magistrates' court or the Crown Court, on appeal to the Crown Court from a sentence imposed by a magistrates' court (provided that there is no reason to believe that the appeal will involve a Newton hearing, or on appeal to the Child Support Appeal Tribunal or the Child Support Commissioners: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 3. As to the meaning of 'intermediary' see PARA 1161 note 16. A 'Newton hearing' is a hearing to determine the facts for sentencing purposes: see *R v Newton* (1982) 77 Cr App Rep 13, 4 Cr App Rep (S) 388, CA; and **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1354.

8 As to the meaning of 'solicitor' see PARA 1063 note 14.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 4. As to the meaning of 'professional client' see PARA 1174. Before accepting any public access instructions from or on behalf of a lay client who has not also instructed a solicitor or other professional client, a barrister must take such steps as are reasonably necessary to ascertain whether it would be in the best interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client: Annexe F2 (The Public Access Rules) r 2. If the barrister is satisfied that it is not in the client's best interests or in the interest of justice for him to accept the instructions or, having accepted the instructions, to continue with the case, he must refuse or return them: see PARAS 1189, 1192. In considering whether to accept, and in carrying out, any public access instructions, a barrister must have regard to guidance published from time to time by the Bar Standards Board: Annexe F2 (The Public Access Rules) r 5. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 6(a). Save in exceptional circumstances, a barrister will have complied with this requirement if he has written promptly to the lay client in the terms of the draft letter annexed to the Public Access Rules: Annexe F2 (The Public Access Rules) r 7. In any case where a barrister has been instructed by an intermediary, he must give the notice required both directly to the lay client; and to the intermediary: Annexe F2 (The Public Access Rules) r 8.

11 le: (1) the fact that in performing his work the barrister will be subject to the requirements of the Code of Conduct, in particular para 401(b) (services which a self-employed barrister may not supply: see PARA 1160) and para 608 (withdrawal from case and return of instructions: see PARAS 1192-1194); (2) the fact that the barrister cannot be expected to perform the functions of a solicitor or other authorised litigator (in particular, that he cannot be expected to fulfil limitation obligations, disclosure obligations and other obligations arising out of or related to the conduct of litigation); (3) the fact that the barrister is a sole practitioner, is not a member of a firm and does not take on any arranging role; (4) in any case where the barrister has been instructed by an intermediary, the fact that he is independent of and has no liability for the intermediary and that the intermediary is the agent of the lay client and not of the barrister; (5) the fact that the barrister may be prevented from completing the work by reason of his professional duties or conflicting professional obligations, and what the client can expect of the barrister in such a situation; (6) the fees which the barrister proposes to charge for the work, or the basis on which his fee will be calculated; (7) the barrister's contact arrangements; and (8) the barrister's complaints procedure and that of the Bar Standards Board: Annexe F2 (The Public Access Rules) r 6(b)-(i). Save in exceptional circumstances, a barrister will have complied with these requirements if he has written promptly to the lay client in the terms of the draft letter annexed to the Public Access Rules: Annexe F2 (The Public Access Rules) r 7. In any case where a barrister has been instructed by an intermediary, he must give the notice required both directly to the lay client; and to the intermediary: Annexe F2 (The Public Access Rules) r 8.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (Public Access Rules) r 9.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 10.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 11(a).

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 11(b).

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 11(c).

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe F2 (The Public Access Rules) r 12.

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B. ACCEPTANCE AND REFUSAL OF INSTRUCTIONS

(A) ACCEPTANCE OF INSTRUCTIONS

1177. Receipt of instructions.

A barrister must read all instructions¹ delivered to him expeditiously². As soon as practicable after receipt of any brief³ or instructions a barrister must satisfy himself that there is no reason why he ought to decline to accept it⁴. A barrister is not considered to have accepted a brief or instructions unless he has had an opportunity to consider it and has expressly accepted it⁵.

1 As to the meaning of 'instructions' see PARA 1164 note 4.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(c). As to the Code of Conduct see PARA 1150.

3 As to the meaning of 'brief' see PARA 1164 note 4.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 3.1. As to the Written Standards see PARA 1150. A barrister should always be alert to the possibility of a conflict of interest: para 3.3; and see further PARAS 1187, 1202. As to a barrister's duty not to accept instructions if to do so would cause him to be professionally embarrassed see PARAS 1182-1189. As to the duty not to act if to do so might prejudice the administration of justice see PARA 1186.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 3.2.

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1178. Duty to consider client's interests.

A barrister must in the case of all instructions¹ consider whether, consistently with the proper and efficient administration of justice and having regard to the circumstances of the case², the nature of his practice, his ability, experience and seniority, and his relationship with the client³, the best interests of the client would be served by instructing or continuing to instruct him in that matter⁴. Where a barrister is instructed in any matter with another advocate or advocates he must also consider whether it would be in the best interests of the client to instruct only one advocate or fewer advocates⁵.

A barrister who in any matter is instructed either directly by the lay client⁶ or by an intermediary⁷ who is not a solicitor⁸ or other authorised litigator⁹ should consider whether it would be in the interests of the lay client or the interests of justice to instruct a solicitor or other authorised litigator or other appropriate intermediary either together with or in place of the barrister¹⁰.

In cases involving several parties, a barrister must on receipt of instructions and further in the event of any change of circumstances consider whether, having regard to all the circumstances including any actual or potential conflict of interest¹¹, any client ought to be separately represented or advised or whether it would be in the best interests of any client to be jointly represented or advised with another party¹².

If at any time in any matter a barrister considers that it would be in the best interests of any client to have different representation, he must immediately so advise the client¹³.

1 As to the meaning of 'instructions' see PARA 1164 note 4.

2 The circumstances of the case include in particular its gravity, complexity and likely cost: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 606.1(a). As to the Code of Conduct see PARA 1150.

3 As to the meaning of 'client' see PARA 1161 note 16.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 606.1. This duty applies whether the barrister is instructed on his own or with another advocate: para 606.1. Certain instructions must not be accepted: see PARAS 1182-1189.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 606.2.

6 As to the meaning of 'lay client' see PARA 1155 note 2.

7 As to the meaning of 'intermediary' see PARA 1161 note 16.

8 As to the meaning of 'solicitor' see PARA 1063 note 14.

9 As to the meaning of 'authorised litigator' see PARA 1161 note 14.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 606.3. As to instruction by licensed access clients see PARAS 1173, 1175. As to direct access by lay clients see PARAS 1173, 1176.

11 As to conflict of interest see PARAS 1187, 1202.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 606.4. As to counsel's continuing duty in a criminal case in which he has been instructed by more than one defendant to consider and advise on matters of conflict of interest see *Mills v R* [1995] 3 All ER 865, [1995] 1 WLR 511, PC.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 607. A barrister who has already been instructed and who gives such advice may, subject to certain obligations, withdraw from the case if the advice is not heeded: see para 609(c); and PARA 1196.

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1179. Unlawful discrimination.

It is unlawful for any person, in relation to the giving, withholding or acceptance of instructions to a barrister, to discriminate against a woman¹, against any person on racial grounds², or against a disabled person³, or to subject any person to harassment on grounds of race or disability⁴.

1 See the Sex Discrimination Act 1975 s 35A(3)(a); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 374. As to what constitutes discrimination against a woman see ss 1-5; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 344 et seq.

2 See the Race Relations Act 1976 s 26A(3); and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 456. As to what constitutes racial discrimination see ss 1-3; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 439 et seq.

3 See the Disability Discrimination Act 1995 s 7A(4); and **DISCRIMINATION** (2007 Reissue) PARA 547. As to what constitutes disability discrimination see ss 1-3, 3A; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 511 et seq.

4 See the Sex Discrimination Act 1975 s 35A(3)(b); the Race Relations Act 1976 s 26A(3); the Disability Discrimination Act 1995 s 7A(4); and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 374, 456, 547. As to what constitutes harassment for these purposes see the Race Relations Act 1976 s 3A; the Disability Discrimination Act 1995 s 3B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARAS 347, 444, 533.

UPDATE

1179 Unlawful discrimination

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

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(B) DUTY TO ACCEPT INSTRUCTIONS

1180. The 'cab-rank rule'.

A self-employed barrister¹ is under a general duty in any field in which he professes to practise and in relation to work which is appropriate to his experience and seniority: (1) to accept any brief² to appear before a court³ in which he professes to practise⁴; (2) to accept any instructions⁵; and (3) to act for any person on whose behalf he is instructed⁶. This duty is known as the 'cab-rank rule', and it applies irrespective of whether the client⁷ is paying privately or is publicly funded, and irrespective of the party on whose behalf the barrister is instructed, the nature of the case, and any belief or opinion which the barrister may have formed as to the character, reputation, cause, conduct, guilt or innocence of the person⁸. There are circumstances, however, in which a self-employed barrister must refuse to accept instructions⁹, and others in which he may so refuse¹⁰.

The cab-rank rule does not apply to international work¹¹.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'brief' see PARA 1164 note 4.

3 As to the meaning of 'court' see PARA 1158 note 3.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 602(a). As to the Code of Conduct see PARA 1150. As to acceptance of briefs and instructions see PARA 1177. See also the Written Standards for the Conduct of Professional Work para 2.2.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 602(b). As to the meaning of 'instructions' see PARA 1164 note 4.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 602(c).

7 As to the meaning of 'client' see PARA 1161 note 16.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 602. As to the importance of the rule see *Arthur JS Hall & Co (a firm) v Simons* [2002] 1 AC 615 at 739-740, [2000] 3 All ER 673 at 738, HL, per Lord Hobhouse of Woodborough; *Geveran Trading Co Ltd v Skjevesland* [2002] EWCA Civ 1567 at [43], [2003] 1 All ER 1 at [43] per Arden LJ.

9 See PARAS 1182-1189.

10 See PARAS 1190-1191. Note that the absence of what could be regarded as sufficient time for the purpose of preparation does not constitute an exception to the rule: see *R v Ulcay* [2007] EWCA Crim 2379, [2008] 1 All ER 547, [2008] 1 WLR 1209; and PARA 1184.

11 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe A (The International Practice Rules) r 3. As to international work see PARA 1164.

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1181. Duty not to withhold advocacy services.

In addition to the cab-rank rule¹, there is a duty applying to every practising barrister² who supplies advocacy services³ not to withhold those services:

- 1725 (1) on the ground that the nature of the case is objectionable to him or to any section of the public⁴;
- 1726 (2) on the ground that the conduct, opinions or beliefs of the prospective client⁵ are unacceptable to him or to any section of the public⁶; or
- 1727 (3) on any ground relating to the source of any financial support which may properly be given to the prospective client for the proceedings in question (for example, on the ground that such support will be available as part of the Community Legal Service or Criminal Defence Service)⁷.

1 As to the cab-rank rule see PARA 1180.

2 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

3 As to the meaning of 'advocacy services' see PARA 1164 note 5.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 601(a). As to the Code of Conduct see PARA 1150. As to the meaning of 'the public' see PARA 1155 note 2.

5 As to the meaning of 'client' see PARA 1161 note 16.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 601(b).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 601(c). As to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq.

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(C) GROUNDS ON WHICH INSTRUCTIONS MUST BE REFUSED

1182. Professional embarrassment.

A barrister must not accept any instructions¹ if to do so would cause him to be professionally embarrassed². Circumstances in which a barrister would be professionally embarrassed include, for example, lack of sufficient experience or existing professional commitments³.

1 As to the meaning of 'instructions' see PARA 1164 note 4.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603. As to the Code of Conduct see PARA 1150. This prohibition overrides the general rule (ie the cab-rank rule: see PARA 1180) requiring a barrister to accept any instructions that are within the scope of his expertise: para 602. In addition, a barrister who has accepted instructions must cease to act if continuing to act would cause him to be professionally embarrassed: see PARAS 1192-1195.

3 See PARAS 1183-1189.

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1183. Barrister's competence.

A practising barrister¹ is under a general duty not to undertake any task which he knows or ought to know he is not competent to handle², and accordingly must not accept any instructions³ if he lacks sufficient experience or competence to handle the matter⁴.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(b)(i). As to the Code of Conduct see PARA 1150.

3 As to the meaning of 'instructions' see PARA 1164 note 4.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(a). To accept instructions in such circumstances would cause a barrister to be professionally embarrassed: see para 603; and PARA 1182. As to the duty of a barrister who has accepted instructions to cease to act if continuing to act would cause him to be professionally embarrassed see PARAS 1192-1195.

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1184. Insufficient time to prepare and existing professional commitments.

A practising barrister¹ is under a general duty not to undertake any task which he does not have adequate time and opportunity to prepare for or perform² or which he cannot discharge within the time requested or otherwise within a reasonable time having regard to the pressure of other work³; and accordingly a barrister must not accept any instructions⁴ if having regard to his other professional commitments he will be unable to do or will not have adequate time and opportunity to prepare that which he is required to do⁵.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(b)(ii). As to the Code of Conduct see PARA 1150. Insufficient time and opportunity to prepare does not of itself constitute an exception to the 'cab-rank rule' (see PARA 1180), in particular if it relates to the lateness of instruction, rather than accepting work over and above existing commitments: *R v Ulcay* [2007] EWCA Crim 2379, [2008] 1 All ER 547, [2008] 1 WLR 1209.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(b)(iii).

4 As to the meaning of 'instructions' see PARA 1164 note 4.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(b). To accept instructions in such circumstances would cause a barrister to be professionally embarrassed: see para 603; and PARA 1182. As to the duty of a barrister who has accepted instructions to cease to act if continuing to act would cause him to be professionally embarrassed see PARAS 1192-1195.

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1185. Instructions which seek to limit authority.

A practising barrister¹ must not accept any instructions² which seek to limit his ordinary authority or discretion in the conduct of proceedings in court³ or require him to act otherwise than in conformity with law or with the provisions of the Code of Conduct of the Bar⁴.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

2 As to the meaning of 'instructions' see PARA 1164 note 4.

3 As to the meaning of 'court' see PARA 1158 note 3.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(c). As to the Code of Conduct see PARA 1150. To accept instructions in such circumstances would cause a barrister to be professionally embarrassed: see PARA 1182. As to the duty of a barrister who has accepted instructions to cease to act if continuing to act would cause him to be professionally embarrassed see PARAS 1192-1195.

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1186. Connection with the case, client or court.

A practising barrister¹ must not accept any instructions² if the matter is one in which he has reason to believe that he is likely to be a witness³ or in which whether by reason of any connection with the client⁴ or with the court⁵ or a member of it or otherwise it will be difficult for him to maintain professional independence or the administration of justice might be or appear to be prejudiced⁶.

Even if he has formed the view that he is not professionally embarrassed, a barrister who is affected by a personal factor which there are reasonable grounds for concluding would prejudice the administration of justice or result in a procedural irregularity, such as would lead to an order made at trial being set aside on appeal, should not act: this follows from his duty to the court⁷.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

2 As to the meaning of 'instructions' see PARA 1164 note 4.

3 If, however, having accepted a brief or instructions, it later appears that he is likely to be a witness in the case on a material question of fact, a barrister may retire or withdraw only if he can do so without jeopardising his client's interests: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 3.6.

It is generally inappropriate for a barrister who has taken witness statements, as opposed to settling witness statements prepared by others, to act as counsel in that case because it risks undermining the independence of the barrister as an advocate: see the Written Standards for the Conduct of Professional Work para 6.2.6. As to the Written Standards see PARA 1150.

4 As to the meaning of 'client' see PARA 1161 note 16.

5 As to the meaning of 'court' see PARA 1158 note 3.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(d). As to the Code of Conduct see PARA 1150. To accept instructions in such circumstances would cause a barrister to be professionally embarrassed: see para 603; and PARA 1182. As to the duty of a barrister who has accepted instructions to cease to act if continuing to act would cause him to be professionally embarrassed see PARAS 1192-1195.

It is generally undesirable for a husband and wife or other cohabiting partners to appear against each other in a contested criminal matter: *R v Batt* [1996] Crim LR 910, CA; and see *R v Smith (Winston)* (1975) 61 Cr App Rep 128, CA (conviction set aside where the pupil of prosecuting counsel had previously met and discussed the case with the defendant, even though no confidential information was disclosed to the prosecution). However, the fact that a barrister practises from the same chambers as a barrister who is instructed by an opposing party or is sitting as the judge or arbitrator is not of itself a reason for declining to act: see *Laker Airways Inc v FLS Aerospace Ltd* [2000] 1 WLR 113, [1999] 2 Lloyd's Rep 45; *Nye Saunders & Partners (a firm) v Alan E Bristow* (1987) 37 BLR 92, CA.

If a barrister who has advised on, or been engaged in, a case is appointed to the bench, and the same case comes before him, the practice is for him to decline to adjudicate on it: see *Thellusson v Lord Rendlesham* (1859) 7 HL Cas 429 at 430; *Phillips v Headlam* (1831) 2 B & Ad 380 at 385; *Lewis v Branthwaite* (1831) 2 B & Ad 437 at 445; *Doe d Wood v Elias* (1846) 7 LTOS 45; *Di Sora v Phillips* (1863) 33 LJ Ch 129.

7 *Gevevan Trading Co Ltd v Skjevesland* [2002] EWCA Civ 1567 at [46], [2003] 1 All ER 1 at [46] per Arden LJ. If counsel considers that he can act but the position can reasonably be regarded as open to objection, disclosure of the relevant facts should be made to the other side as soon as practicable and (unless that party

duly accepts the position) to the court at the opening of the hearing, so that the court can consider the matter at an early stage: *Geveran Trading Co Ltd v Skjevesland* at [46].

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1187. Conflict of interest and client confidentiality.

A practising barrister¹ must not accept any instructions² if there is or appears to be a conflict or risk of conflict either between the interests of the barrister and some other person or between the interests of any one or more clients³, unless all relevant persons consent to the barrister accepting the instructions⁴. A barrister should always be alert to the possibility of a conflict of interests⁵.

If after a barrister has accepted a brief or instructions on behalf of more than one lay client, there is or appears to be a conflict or a significant risk of a conflict between the interests of any one or more of such clients, he must not continue to act for any client unless all such clients give their consent to his so acting⁶.

A barrister must also not accept instructions if there is a risk that information confidential to another client or former client might be communicated to or used for the benefit of anyone other than that client or former client without their consent⁷.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

2 As to the meaning of 'instructions' see PARA 1164 note 4.

3 As to the meaning of 'client' see PARA 1161 note 16.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(e). As to the Code of Conduct see PARA 1150. Thus a barrister should not appear as a barrister: (1) in any matter in which he is a party or has a significant pecuniary interest; (2) either for or against any local authority, firm or organisation of which he is a member or in which he has directly or indirectly a significant pecuniary interest; or (3) either for or against any company of which he is a director, secretary or officer or in which he has directly or indirectly a significant pecuniary interest: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 3.7; and see eg *Re Richards, Uglow v Richards* (1901) 50 WR 90; *Re Morgan, Brown v Jones* (1927) 71 Sol Jo 650 (barrister should not act in the same matter for both a neutral trustee and a party interested in the trust fund). As to the Written Standards see PARA 1150. To accept instructions in any of these circumstances would cause a barrister to be professionally embarrassed: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603; and PARA 1182. As to the duty of a barrister who has accepted instructions to cease to act if continuing to act would cause him to be professionally embarrassed see PARAS 1192-1195. Note, however, that the prohibition against appearing as a barrister in any matter in which he is a party does not disallow a barrister from recovering certain costs where he appears on his own behalf to answer a criminal charge: see *Khan v Lord Chancellor* [2003] EWHC 12 (QB), [2003] 2 All ER 367, [2003] 1 WLR 2385; and PARAS 1296, 1313.

If a brief is delivered to counsel to represent the defendant at a trial at which he has already been instructed to prosecute, the proper course is to write to the defendant's solicitors to explain that he cannot accept the brief because he has already been instructed for the prosecution and ask whether they or the defendant have in the circumstances any objection to the barrister appearing for the prosecution: Annual Statement 1971-72 p 36; and see *R v Gluckstad* (1972) 56 Cr App Rep 628, CA.

Even if there is no conflict of interest, when a barrister has accepted a brief or instructions for any party in any proceedings, he should not accept a brief or instructions in respect of an appeal or further stage of the proceedings for any other party without obtaining the prior consent of the original client: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 3.5. As to the meaning of 'brief' see PARA 1164 note 4.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 3.3. In general any such conflict should be resolved in favour of the lay client: see the Written Standards for the Conduct of Professional Work para 3.3. As to the meaning of 'lay client' see PARA 1155 note 2.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 3.4.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(f). This rule reflects the general law: see *Earl of Cholmondeley v Lord Clinton* (1815) 19 Ves 261 at 275 per Lord Eldon; *Prince Jeffri Boliah v KPMG (a firm)* [1999] 2 AC 222, [1999] 1 All ER 517, HL; and PARA 1201. The information which the law is concerned to protect is information which: (1) was originally communicated in confidence; (2) at the date of the later proposed instructions is still confidential and may reasonably be considered remembered or capable, on the memory being triggered, of being recalled; and (3) is relevant to the subject matter of the subsequent proposed instructions: see *Re A firm of Solicitors* [1997] Ch 1 at 9-10, [1995] 3 All ER 482 per Lightman J. A barrister who possesses such information can be restrained by injunction from acting: see PARA 1201.

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1188. Instructions from solicitors subject to Withdrawal of Credit Directions.

A self-employed barrister¹ must not accept any instructions² which are delivered by a solicitor³ or firm of solicitors in respect of whom a Withdrawal of Credit Direction has been issued⁴, unless his fees are to be paid directly by the Legal Services Commission⁵ or the instructions are accompanied by payment of an agreed fee or the barrister agrees in advance to accept no fee for such work or has obtained the consent of the Chairman of the Bar⁶.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'instructions' see PARA 1164 note 4.

3 As to the meaning of 'solicitor' see PARA 1063 note 14.

4 As to Withdrawal of Credit Directions see PARAS 1307-1308.

5 As to the meaning of 'Legal Services Commission' see PARA 1161 note 18.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(g). As to the Code of Conduct see PARA 1150. To accept instructions in such circumstances would cause a barrister to be professionally embarrassed: see para 603; and PARA 1182. As to the duty of a barrister who has accepted instructions to cease to act if continuing to act would cause him to be professionally embarrassed see PARAS 1192-1195.

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1189. Need for professional client.

A practising barrister¹ must not accept any instructions² if he is instructed by or on behalf of a lay client³ who has not also instructed a solicitor⁴ or other professional client⁵, and if the barrister is satisfied that it is in the interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client⁶.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

2 As to the meaning of 'instructions' see PARA 1164 note 4.

3 As to the meaning of 'lay client' see PARA 1155 note 2.

4 As to the meaning of 'solicitor' see PARA 1063 note 14.

5 As to the meaning of 'professional client' see PARA 1174. As to direct instruction by lay clients see PARA 1176.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 603(h). As to the Code of Conduct see PARA 1150. To accept instructions in such circumstances would cause a barrister to be professionally embarrassed: see para 603; and PARA 1182. As to the duty of a barrister who has accepted instructions to cease to act if continuing to act would cause him to be professionally embarrassed see PARAS 1192-1195.

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(D) GROUNDS ON WHICH INSTRUCTIONS MAY BE REFUSED

1190. Refusal on grounds of remuneration.

A self-employed barrister¹ is not obliged to accept instructions² other than at a fee which is proper, having regard to the complexity, length and difficulty of the case, his ability, experience and seniority, and the expenses which he will incur³. He is also not obliged to accept any instructions unless and until his fees are agreed or, if having required his fees to be paid before he accepts the instructions, those fees are not paid⁴; and he may also refuse to do any work under a conditional fee agreement⁵.

A barrister must not, however, in any of these circumstances withhold advocacy services on any prohibited ground⁶.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'instructions' see PARA 1164 note 4. The general rule is that a barrister must accept any instructions that are within the scope of his expertise (the 'cab-rank rule'): see PARA 1180. Certain instructions must not be accepted: see PARAS 1182-1189.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(b). As to the Code of Conduct see PARA 1150. For these purposes, any instructions in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service (as to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq) for which the amount or rate of the barrister's remuneration is prescribed by regulation or subject to assessment are, unless otherwise determined (either in a particular case or in any class or classes of case or generally), deemed to be at a proper professional fee: para 604(b). The Bar Council decided on 30 April 2001 that, with effect from 1 May 2001, all cases subject to family graduated fees are no longer deemed to be at a proper professional fee; and on 15 November 2003 the Bar Council decided that, with immediate effect, all cases subject to criminal graduated fees are no longer deemed to be at a proper professional fee: para 604(b) (notes). As to the meaning of 'Legal Services Commission' see PARA 1161 note 18. As to the meaning of 'Bar Council' see PARA 1042 note 1.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(d)(i), (ii). A barrister may not, however, refuse on these grounds in a matter funded by the Legal Services Commission as part of the Community Legal Service or the Criminal Defence Service: para 604(d).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(c). 'Conditional fee agreement' means a conditional fee agreement as defined in the Courts and Legal Services Act 1990 s 58: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to conditional fee agreements see further PARAS 953-954, 1309; and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1830, 1832-1836.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604. For a barrister's duty not to withhold advocacy services see para 601; and PARA 1181.

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1191. Other professional grounds.

A self-employed barrister¹ is not obliged to accept instructions²:

- 1728 (1) requiring him to do anything other than during the course of his ordinary working year³;
- 1729 (2) from anyone other than a professional client⁴ who accepts liability for the barrister's fees⁵;
- 1730 (3) in a matter where the lay client is also the professional client⁶;
- 1731 (4) to do any work on any contractual terms⁷; or
- 1732 (5) where the potential liability for professional negligence in respect of the case could exceed the level of professional indemnity insurance which is reasonably available and likely to be available in the market for him to accept⁸.

A barrister must not, however, in any of these circumstances withhold advocacy services on any prohibited ground⁹.

A self-employed Queen's Counsel is not obliged to accept instructions to settle alone any document of a kind generally settled only by or in conjunction with a junior¹⁰, or to act without a junior if he considers that the interests of the lay client¹¹ require that a junior should also be instructed¹².

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'instructions' see PARA 1164 note 4. The general rule is that a barrister must accept any instructions that are within the scope of his expertise (the 'cab-rank rule'): see PARA 1180. Certain instructions must not be accepted: see PARAS 1182-1189.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(a). As to the Code of Conduct see PARA 1150.

4 As to the meaning of 'professional client' see PARA 1174.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(e).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(f).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(g). As to the contractual terms on which barristers offer their services to solicitors see PARAS 1293-1295.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(h).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604. For a barrister's duty not to withhold advocacy services see para 601; and PARA 1181.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 605(a).

11 As to the meaning of 'lay client' see PARA 1155 note 2.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 605(b).

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C. WITHDRAWAL FROM CASE AND RETURN OF INSTRUCTIONS

(A) CIRCUMSTANCES IN WHICH BARRISTERS MUST CEASE TO ACT

1192. Professional embarrassment.

A barrister must cease to act if continuing to act would cause him to be professionally embarrassed¹. The circumstances in which continuing to act would cause professional embarrassment are the same as those where instructions must be refused on this ground: that is, where the barrister lacks sufficient experience or competence to handle the matter²; where he is unable to do, or does not have adequate time to prepare, the work he is required to do³; where the instructions seek to limit his authority or require him to act unlawfully or improperly⁴; where he is likely to be a witness or is otherwise unable to maintain professional independence⁵; where there is a conflict of interest or risk of disclosure of confidential information⁶; where the instructions are given by a solicitor⁷ who is subject to a Withdrawal of Credit Direction⁸; and where, having been instructed by or on behalf of a lay client⁹ who has not also instructed a solicitor or other professional client¹⁰, the barrister is satisfied that it is in the interests of the client or in the interests of justice for the lay client to instruct a solicitor or other professional client¹¹.

If the lay client completely changes his instructions counsel will be professionally embarrassed if, consistent with his obligations to his client, the court and the rules of his profession, he cannot continue to represent his client on the basis of the new instructions¹².

Although there is no prohibition on barristers accepting instructions on behalf of more than one client¹³, a barrister must cease to act if, having accepted instructions on behalf of more than one client, there is or appears to be a conflict or risk of conflict between the interests of any one or more of such clients, or a risk of a breach of confidence, and the clients do not all consent to him continuing to act¹⁴.

Providing that he can withdraw without jeopardising the client's interests, a barrister must also cease to act if having come into possession of a document belonging to another party by some means other than the normal and proper channels and having read it before he realises that it ought to have been returned unread to the person entitled to possession of it, he would thereby be embarrassed in the discharge of his duties by his knowledge of the contents of the document¹⁵.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 608(a). If the barrister who ceases to act in these circumstances is self-employed (see PARA 1036), he must return any instructions: para 608. As to the meaning of 'instructions' see PARA 1164 note 4. It is for counsel to decide whether, consistent with his obligations to his client and the rules of his profession, he is so professionally embarrassed. If he so decides he must, without contravening the client's legal privilege, inform the court to enable the judge to decide how to proceed: see *R v Ulcay* [2007] EWCA Crim 2379, [2008] 1 All ER 547, [2008] 1 WLR 1209.

2 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(a), 608(a); and PARA 1183.

3 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(b), 608(a); and PARA 1184. As to the return of instructions in circumstances where a barrister cannot carry them out owing to time pressures see further PARA 1195.

4 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(c), 608(a); and PARA 1185.

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(d), 608(a); and PARA 1186. If a barrister would be professionally embarrassed only because it appears to him that he is likely to be a witness on a material question of fact, he may retire or withdraw only if he can do so without jeopardising the client's interests: para 608(a).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(e), (f), 608(a); and PARA 1187.

7 As to the meaning of 'solicitor' see PARA 1063 note 14.

8 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(g), 608(a); and PARAS 1188, 1307-1308.

9 As to the meaning of 'lay client' see PARA 1155 note 2.

10 As to the meaning of 'professional client' see PARA 1174.

11 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 603(h), 608(a); and PARA 1189.

12 See *R v Ulcay* [2007] EWCA Crim 2379, [2008] 1 All ER 547, [2008] 1 WLR 1209.

13 As to the meaning of 'client' see PARA 1161 note 16. The court may, however, refuse to hear counsel holding such instructions: see *Day v Ponsonby* (1842) 5 I Eq R 24; *Re Burton, Danby v Burton* [1901] WN 202.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 608(b).

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 608(f). If, however, the barrister cannot return his brief or instructions without prejudicing his lay client (for example, by reason of the proximity of the trial), he should not return his brief or instructions and should, unless the court otherwise orders, make such use of the document as will be in his client's interests, having informed his opponent of his knowledge of the document and of the circumstances, so far as known to him, in which the document was obtained and of his intention to use it: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 7.3.2. As to the Written Standards see PARA 1150. In the event of objection to the use of such document, it is for the court to determine what use, if any, may be made of it: para 7.3.2. As to the meaning of 'court' see PARA 1158 note 3. As to privilege of communications see PARA 1146.

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1193. Funding irregularities.

A barrister must cease to act if in any case funded by the Legal Services Commission¹ as part of the Community Legal Service or Criminal Defence Service² it has become apparent to him that such funding has been wrongly obtained by false or inaccurate information and action to remedy the situation is not immediately taken by the client³.

1 As to the meaning of 'Legal Services Commission' see PARA 1161 note 18.

2 As to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 608(c). As to the Code of Conduct see PARA 1150. As to the meaning of 'client' see PARA 1161 note 16. If the barrister who ceases to act in these circumstances is self-employed (see PARA 1036), he must return any instructions: para 608. As to the meaning of 'instructions' see PARA 1164 note 4. There is also a general rule that a barrister must neither cease to act nor return instructions without having first explained to the client his reasons for so doing (para 610(a)), and may not return instructions to another barrister without the client's consent (para 610(b)). See *R v Sutton Justices, ex p DPP* [1992] 2 All ER 129, 95 Cr App Rep 180, DC, per Brooke J.

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1194. Client non-disclosure.

A barrister must cease to act if his client¹ refuses to authorise him to make some disclosure to the court² which his duty to the court requires him to make³, or if, having become aware during the course of a case of the existence of a document which should have been but has not been disclosed on disclosure⁴, the client fails forthwith to disclose it⁵.

1 As to the meaning of 'client' see PARA 1161 note 16.

2 As to the meaning of 'court' see PARA 1158 note 3.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 608(d). As to the Code of Conduct see PARA 1150. See *Vernon v Bosley (No 2)* [1999] QB 18 at 39, [1997] 1 All ER 614 at 631, CA, per Stuart-Smith J. It was suggested (obiter) that, even if not authorised to do so by the client, counsel has a duty to disclose the relevant material to his opponent and, unless the parties agree otherwise, to the judge: see *Vernon v Bosley (No 2)* per Thorpe LJ. The view was expressed that, if counsel becomes aware of material which shows that the court has been misled, it is counsel's duty to inform the court: see *Vernon v Bosley (No 2)* per Evans LJ. The view preferred by the Bar Council and reflected in the Code of Conduct is that of Stuart-Smith LJ.

4 As to disclosure see **CIVIL PROCEDURE** vol 11 (2009) PARA 538 et seq.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 608(e). If the barrister who ceases to act in these circumstances is self-employed (see PARA 1036), he must return any instructions: para 608. As to the meaning of 'instructions' see PARA 1164 note 4.

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1195. Inability to carry out instructions within a reasonable time.

If it becomes apparent to a barrister that he will not be able to carry out instructions¹ within the time requested or within a reasonable time after receipt, or if there is an appreciable risk that he may not be able to undertake a brief² or fulfil any other professional engagement which he has accepted, he must inform his client³ forthwith and (subject to certain limitations⁴) return the instructions to the client or to another barrister acceptable to the client⁵.

1 As to the meaning of 'instructions' see PARA 1164 note 4.

2 As to the meaning of 'brief' see PARA 1164 note 4.

3 As to the meaning of 'client' see PARA 1161 note 16.

4 See PARAS 1197-1198.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(e). As to the Code of Conduct see PARA 1150. If a barrister learns that two trials in which he is briefed are due to be heard at the same time, he ought either to return one of the briefs or take steps to try to defer the hearing of one of the trials: *Re a Barrister* [1989] NLJR 327.

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(B) CIRCUMSTANCES IN WHICH BARRISTERS MAY CEASE TO ACT

1196. Requirement of substantial reason.

Subject to certain limitations¹, a barrister may withdraw from a case where he is satisfied that his instructions² have been withdrawn³, that his professional conduct is being impugned⁴, that advice that he has given that it would be in the best interests of the client⁵ to have different representation⁶ has not been heeded⁷, or that there is some other substantial reason for so doing⁸.

1 See PARAS 1197-1198.

2 As to the meaning of 'instructions' see PARA 1164 note 4.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 609(a). As to the Code of Conduct see PARA 1150. A defendant who voluntarily absents himself from his trial does not in so doing impliedly withdraw his instructions: see *R v Shaw* [1980] 2 All ER 433, [1980] 1 WLR 1526, CA (trial judge had ruled that defence counsel and solicitor should take no further part in the case after their client had voluntarily absconded; held on appeal that the judge should not involve himself in such matters of professional conduct; conviction set aside as unsafe). As to counsel's duty where the defendant absconds see PARA 1230.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 609(b).

5 As to the meaning of 'client' see PARA 1161 note 16.

6 The advice he has given in accordance with the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 607 (see PARA 1178) or para 703 (see PARA 1202).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 609(c).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 609(d). For example, if in a criminal case the client persists in pleading guilty despite telling counsel that he did not commit the offence for which he is charged: see PARA 1227. In the absence of a real emergency, the unavailability of retained counsel does not constitute a substantial reason for transferring a brief the night before a hearing: see *R v Sutton Justices, ex p DPP* [1992] 2 All ER 129, 95 Cr App Rep 180, DC, per Brooke J.

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(C) CIRCUMSTANCES IN WHICH BARRISTERS MUST NOT CEASE TO ACT

1197. Return of brief to fulfil another engagement.

A barrister must not return a brief¹ which he has accepted and for which a fixed date has been obtained or (except with the consent of the lay client² and where appropriate the court³) break any other engagement to supply legal services⁴ in the course of his practice so as to enable him to attend or fulfil an engagement (including a social or non-professional engagement) of any other kind⁵.

1 As to the meaning of 'brief' see PARA 1164 note 4.

2 As to the meaning of 'lay client' see PARA 1155 note 2.

3 As to the meaning of 'court' see PARA 1158 note 3.

4 As to the meaning of 'legal services' see PARA 1152.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 610(c). As to the Code of Conduct see PARA 1150. 'Non-professional engagement' refers to a person's practice as a barrister, and it is accordingly a violation of para 610(c) for a barrister to return a brief which has been accepted and for which a fixed date has been obtained in order to attend to vote in the House of Commons: see *Hesford v General Council of the Bar* (1999) Times, 20 August. A barrister who has accepted a brief for the defence of a person charged with a serious criminal offence should so far as reasonably practicable ensure that the risk of a conflicting professional engagement does not arise: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 4.1. As to the Written Standards see PARA 1150.

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1198. Return of instructions or withdrawal which prejudices client.

A barrister may not return any instructions¹ or withdraw from a case, other than in circumstances where return or withdrawal is compulsory under the Code of Conduct of the Bar², in such a way or in such circumstances that the client³ may be unable to find other legal assistance in time to prevent prejudice being suffered by him⁴.

1 As to the meaning of 'instructions' see PARA 1164 note 4.

2 As to the circumstances in which return of instructions or withdrawal from a case are compulsory see PARAS 1192-1195.

3 As to the meaning of 'client' see PARA 1161 note 16.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 610(d). As to the Code of Conduct see PARA 1150.

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(D) DUTY OF BARRISTER WHO CEASES TO ACT

1199. Duty to client on return of instructions.

In any matter in which he has been instructed¹, a barrister must not cease to act or return instructions without having first explained to the client² his reasons for doing so³, and must not return instructions to another barrister without the consent of the client⁴.

1 As to the meanings of 'instructed' and 'instructions' see PARA 1164 note 4.

2 As to the meaning of 'client' see PARA 1161 note 16.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 610(a). As to the Code of Conduct see PARA 1150.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 610(b). See also *R v Sutton Justices, ex p DPP* [1992] 2 All ER 129, 95 Cr App Rep 180, DC, per Brooke J.

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(v) Conduct of Cases

A. STANDARDS GENERALLY APPLICABLE

(A) GENERAL DUTIES

1200. Professional standards generally.

A barrister must in all his professional activities be courteous, act promptly, conscientiously, diligently and with reasonable competence, and take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's¹ time and to ensure that professional engagements are fulfilled².

¹ As to the meaning of 'court' see PARA 1158 note 3.

² Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(a). As to the Code of Conduct see PARA 1150.

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1201. Duty of confidence.

A barrister must preserve the confidentiality of his lay client's¹ affairs². He must not without the prior consent of the lay client or as permitted by law lend or reveal the contents of the papers in any instructions³ or communicate to any third person⁴ information which has been entrusted to him in confidence or use such information either to the lay client's detriment or to his own or another client's advantage⁵. This duty of confidentiality continues after the relation of counsel and client has ceased⁶, and prevents a barrister from accepting a brief⁷ to act against a former client, even if that client has refused to retain him, if by reason of his former engagement the barrister possesses any confidential information which might be prejudicial to his former client in the later litigation⁸.

The duty of confidentiality is not only a matter of professional conduct but also a matter of law⁹. The courts will interfere by injunction to prevent a barrister from disclosing client secrets or to restrain a barrister from acting if he has relevant confidential information¹⁰, and will set aside any deed or transaction by which the barrister has, by making use of the confidence reposed in him, gained a benefit to himself¹¹.

1 As to the meaning of 'lay client' see PARA 1155 note 2.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 702. As to the Code of Conduct see PARA 1150. As to a barrister's duty to his lay client generally see PARA 1170.

3 As to the meaning of 'instructions' see PARA 1164 note 4.

4 This does not include another barrister, a pupil, or any other person who needs to know it for the performance of their duties; nor does it include, in the case of a registered European lawyer, the person with whom he is acting in conjunction for the purposes of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annex B (The Registered European Lawyers Rules) r 5(3) (see PARA 1166); para 702. As to the meaning of 'European lawyer' see PARA 535; and as to the meaning of 'registered European lawyer' see PARA 1102 note 7.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 702; and see *Carter v Palmer* (1839) 1 Dr & Wal 722 (affd (1841) 8 Cl & Fin 657, HL); *R v Walker* (circ 1668) Tremaine's Pleas of the Crown 261; 2 Hawk PC II c 22 s 30. As to the duty not to accept instructions where a barrister possesses information confidential to another client see PARA 1187.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 702.

7 As to the meaning of 'brief' see PARA 1164 note 4.

8 *Earl of Cholmondeley v Lord Clinton* (1815) 19 Ves 261 at 275 per Lord Eldon.

9 *Carter v Palmer* (1839) 1 Dr & Wal 722 (affd (1841) 8 Cl & Fin 657, HL); *R v Walker* (circ 1668) Tremaine's Pleas of the Crown 261; 2 Hawk PC II c 22 s 30.

10 *Prince Jeffri Bolkiah v KPMG (a firm)* [1999] 2 AC 222, [1999] 1 All ER 517, HL; *Geveran Trading Co Ltd v Skjevesland* [2002] EWCA Civ 1567 at [38] [2003] 1 All ER 1 at [38], per Arden LJ.

11 A barrister who used knowledge of his client's affairs gained whilst employed as counsel to buy up cheaply charges on his former client's estates was held to be a trustee of the charges for his former client: *Carter v Palmer* (1839) 1 Dr & Wal 722; affd (1841) 8 Cl & Fin 657, HL.

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1202. Duty to notify conflict of interest between lay and professional clients.

If a self-employed barrister¹ forms the view that there is a conflict of interest between his lay client² and a professional client³ or other intermediary⁴, he must consider whether it would be in the lay client's interest to instruct another professional adviser or representative⁵. If he considers that it would be, the barrister must so advise and must take such steps as he considers necessary to ensure that his advice is communicated to the lay client⁶. A lay client's failure to heed such advice may be grounds for a barrister withdrawing from a case⁷.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'lay client' see PARA 1155 note 2.

3 As to the meaning of 'professional client' see PARA 1174.

4 As to the meaning of 'intermediary' see PARA 1161 note 16.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 703. As to the Code of Conduct see PARA 1150. Such circumstances may arise, for example, when the barrister considers that the intermediary may have been negligent: para 703. As to a barrister's duty to his lay client generally see PARA 1170.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 703. If necessary the barrister should send a copy of his advice in writing directly to the lay client as well as to the intermediary: para 703.

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 609(c); and PARA 1196.

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1203. Use of documents.

A barrister should not obtain or seek to obtain a document, or knowledge of the contents of a document, belonging to another party other than by means of the normal and proper channels for obtaining such documents or such knowledge¹. If a barrister comes into possession of a document belonging to another party by some means other than the normal and proper channels² he should make inquiries of his professional client in order to ascertain the circumstances in which the document was obtained by his professional or lay client (where appropriate)³, and, unless satisfied that the document has been properly obtained in the ordinary course of events, he must at once return the document unread to the person entitled to possession of it⁴.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 7.1. As to the Written Standards see PARA 1150. As to the normal and proper channels of disclosure see **CIVIL PROCEDURE** vol 11 (2009) PARA 538 et seq.

2 A document may, for example, have come into his possession in consequence of a mistake or inadvertence by another person or the document may appear to belong to another party, or to be a copy of such a document, and to be privileged from disclosure or otherwise to be one which ought not to be in the possession of his professional or lay client: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) PARA 7.2. As to privilege of communications see PARA 1146. As to the meaning of 'professional client' see PARA 1174. As to the meaning of 'lay client' see PARA 1155 note 2.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 7.2(a).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 7.2(b).

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(B) PREPARATION OF CASES

1204. Drafting documents.

A barrister must not devise facts which will assist in advancing the lay client's¹ case². He must not draft any statement of case, witness statement, affidavit, notice of appeal or other document containing:

- 1733 (1) any statement of fact or contention which is not supported by the lay client or by his instructions³;
- 1734 (2) any contention which he does not consider to be properly arguable⁴;
- 1735 (3) any allegation of fraud unless he has clear instructions to make such allegation and has before him reasonably credible material which as it stands establishes a prima facie case of fraud⁵; or
- 1736 (4) in the case of a witness statement or affidavit, any statement of fact other than the evidence which in substance according to his instructions the barrister reasonably believes the witness would give if the evidence contained in the witness statement or affidavit were being given in oral examination⁶.

These rules do not, however, prevent a barrister drafting a document containing specific factual statements or contentions included by the barrister subject to confirmation of their accuracy by the lay client or witness⁷.

1 As to the meaning of 'lay client' see PARA 1155 note 2.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 704. As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 704(a). As to the meaning of 'instructions' see PARA 1164 note 4.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 704(b). When asked to draft grounds of appeal, counsel should draft only grounds which he is certain in his own mind are arguable and which he considers that he can come before the court and seek to uphold: *R v B* [1966] 3 All ER 496, [1966] 1 WLR 1612, CA. It is wrong for counsel, in drafting grounds of appeal, to make general, sweeping attacks on a judge's summing up, which are obviously unjustified: *R v Morson* (1976) 62 Cr App Rep 236, CA.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 704(c). At the preparatory stage, the relevant 'material' need not be evidence in admissible form provided it is of such a character as to lead responsible counsel to conclude that serious allegations could properly be based upon it: see *Medcalf v Mardell* [2002] UKHL 27 at [22], [2003] 1 AC 120 at [22] per Lord Bingham of Cornhill. It is otherwise at the hearing stage: see *Medcalf v Mardell*; and PARA 1210.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 704(d). As to the taking of witness statements by counsel see PARA 1209.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 704.

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1205. Conferences.

As a matter of good practice, a barrister should be available on reasonable notice for a conference prior to the day of hearing of any case in which he is briefed¹. If no such conference takes place then the barrister should be available for a conference on the day of the hearing². The venue of a conference is a matter for agreement between the barrister and his professional clients³.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 5.9. As to the Written Standards see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 5.9.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 5.9. As to the meaning of 'professional client' see PARA 1174.

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(C) DEALING WITH WITNESSES

1206. General duties.

A barrister must not rehearse, practise or coach a witness in relation to his evidence¹ or encourage a witness to give evidence which is untruthful or which is not the whole truth². Once a witness has begun to give evidence a barrister must not, except with the consent of the representative for the opposing side or of the court, communicate directly or indirectly about a case with him until his evidence has been concluded³.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 705(a). As to the distinction between legitimate witness preparation and impermissible rehearsing see *R v Momodou* [2005] EWCA Crim 177, [2005] 2 All ER 571, [2005] 1 WLR 3442; and the Bar Standards Board Guidance 'Guidance on Witness Preparation - Momodou and LImani' (October 2005). As to the Code of Conduct see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 705(b).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 705(c). This rule applies whether or not the witness is the barrister's lay client: para 705(c). As to the meaning of 'lay client' see PARA 1155 note 2.

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1207. Contact with witnesses generally.

A barrister may have contact with witnesses for the purpose of interviewing them or discussing with them the substance of their evidence or the evidence of other witnesses¹. Indeed, it is a barrister's responsibility, especially when the witness is nervous, vulnerable or apparently the victim of criminal or similar conduct, to ensure that those facing unfamiliar court procedures are put as much at ease as possible². However, a barrister should exercise his discretion and consider very carefully whether and to what extent such contact is appropriate, bearing in mind in particular that it is not the barrister's function (but that of his professional client³) to investigate and collect evidence⁴. The guiding principle must be the obligation of counsel to promote and protect his lay client's⁵ best interests⁶ so far as that is consistent with the law and with counsel's overriding duty to the court⁷.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.1. There is no longer any rule which prevents a barrister from having contact with any witness: Written Standards for the Conduct of Professional Work para 6.1.2. As to the Written Standards see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.1.4.

3 As to the meaning of 'professional client' see PARA 1174.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.2. A self-employed barrister may not, generally, investigate or collect evidence for use in any court: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 401(b)(iii); and PARA 1160. As to the Code of Conduct see PARA 1150. As to self-employed barristers see PARA 1036.

5 As to the meaning of 'lay client' see PARA 1155 note 2.

6 As to this obligation see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 303; and PARA 1170.

7 Code of Conduct of the Bar of England and Wales Written Standards for the Conduct of Professional Work (8th Edn, 2004) para 6.2.3. For counsel's duty to the court see PARA 1169.

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1208. Discussing the substance of the case with witnesses.

A barrister needs to be alert to the risks that any discussion of the substance of a case with a witness¹ may lead to suspicions of coaching², and thus tend to diminish the value of the witness's evidence in the eyes of the court³, or may place the barrister in a position of professional embarrassment⁴, for example if he thereby becomes himself a witness in the case⁵. He should also be alert to the fact that, even in the absence of any wish or intention to do so, authority figures can subconsciously influence lay witnesses and that discussion of the substance of the case may unwittingly contaminate the witness's evidence⁶.

Discussions which take place in the presence of more than one witness of fact or which involve the disclosure to one witness of fact of the factual evidence of another witness have been strongly deprecated by the courts as tending inevitably to encourage the rehearsal or coaching of witnesses and to increase the risk of fabrication or contamination of evidence⁷. It is not, however, always inappropriate to disclose one witness's evidence to another, but discretion is required, especially where the evidence of independent witnesses is involved⁸.

A barrister should not discuss the substance of the case or any evidence with the other side's witnesses except in rare and exceptional circumstances and then only with the prior knowledge of his opponent⁹. There is, however, no rule which prevents a barrister from exchanging common courtesies with the other side's witnesses¹⁰.

1 Discussion of the substance of a case with a witness is permitted: see PARA 1207.

2 Coaching of witnesses is not allowed: see PARA 1206. As to where the line should be drawn, see *R v Momodou* [2005] EWCA Crim 177, [2005] 2 All ER 571, [2005] 1 WLR 3442; and the Bar Standards Board Guidance 'Guidance on Witness Preparation - Momodou and Ilmani' (October 2005).

3 As to the meaning of 'court' see PARA 1158 note 3.

4 As to the duty to withdraw if continuing to act would cause professional embarrassment see PARA 1192.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.4. As to the Written Standards see PARA 1150. These dangers are most likely to occur if such discussion takes place before the barrister has been supplied with a proof of the witness's evidence or in the absence of the barrister's professional client or his representative: para 6.2.4. As to the meaning of 'professional client' see PARA 1174.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.4.

7 See Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.5; *R v Arif* (1993) Times, 17 June, CA; *Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd* [1994] 4 All ER 225, [1994] 1 WLR 1271, CA.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.5.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.7.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.7.

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1209. Taking witness statements.

Whilst there is now no rule that prevents a barrister from taking a witness statement in a civil case¹, there is a distinction between the settling of a witness statement and taking a witness statement². It is not appropriate for a barrister who has taken witness statements, as opposed to settling witness statements prepared by others, to act as counsel in that case, unless he is a junior member of the team of counsel and will not be examining the witness or there are exceptional circumstances³, because it risks undermining the independence of the barrister as an advocate⁴.

1 For the rule that a self-employed barrister may not take a proof of evidence in a criminal case see PARA 1160. As to self-employed barristers see PARA 1036.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.6. As to Bar Council guidance see PARA 1150. As to the duty of a barrister in relation to the drafting of witness statements see PARA 1204.

3 Exceptional circumstances include: (1) the witness is a minor one; or (2) Counsel has no choice but to take a proof and this is the only practical course in the interests of justice - this would apply, for instance, where a witness appears unexpectedly at court and there is no one else competent to take the statement: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.6.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.2.6.

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(D) CONDUCT IN COURT

1210. Barrister's duties in court and mediations.

When conducting proceedings in court¹, a barrister is personally responsible for the conduct and presentation of his case and must exercise personal judgement upon the substance and purpose of statements made and questions asked². He must not adduce evidence obtained otherwise than from or through the client³, or devise facts which will assist in advancing his client's case⁴. He must not make a submission which he does not consider to be properly arguable⁵. He must not make statements or ask questions which are merely scandalous or intended or calculated only to vilify, insult or annoy either a witness or some other person⁶, and must not by assertion in a speech impugn a witness whom he has had an opportunity to cross-examine unless in cross-examination he has given the witness an opportunity to answer the allegation⁷. He must, if possible, avoid the naming in open court of third parties whose character would thereby be impugned⁸; and he must not suggest that a victim, witness or other person is guilty of crime, fraud or misconduct, or make any defamatory aspersion on the conduct of any other person, or attribute to another person the crime or conduct of which his lay client⁹ is accused, unless such allegations go to a matter in issue which is material to the lay client's case¹⁰, and appear to him to be supported by reasonable grounds¹¹.

A barrister when conducting proceedings in court must not assert to the court a personal opinion of the facts or the law¹². He must ensure that the court is informed of all relevant decisions and legislative provisions of which he is aware, whether the effect is favourable or unfavourable towards the contention for which he argues¹³; and he must bring any procedural irregularity to the attention of the court during the trial and not reserve such matter to be raised on appeal¹⁴.

A barrister instructed in a mediation must not knowingly or recklessly mislead the mediator or any party or their representative¹⁵.

1 As to the meaning of 'court' see PARA 1158 note 3.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(a). As to the Code of Conduct see PARA 1150. Whilst counsel has the right to seek the court's assistance where questions of honour or professional conduct are concerned, and to request an interview with the judge if a matter arises which cannot properly be discussed in open court, the right should be sparingly exercised, for the responsibility of presenting a case rests with counsel alone; it is also of vital importance to avoid giving rise to any suspicion that part of a public trial is being conducted behind closed doors: see *Schlesinger v Schlesinger* [1959] 1 All ER 155 at 160, [1959] 1 WLR 92 at 99, CA, per Hodson LJ; *R v Turner* [1970] 2 QB 321, [1970] 2 All ER 281, CA; *R v Cullen* (1984) 81 Cr App Rep 17, CA (judge should ensure there is someone present who takes a note of what takes place); *Practice Direction (Criminal Proceedings: Consolidation)* [2002] 1 WLR 2870 (if the discussion relates to sentence defence counsel must disclose to his client what took place). If the judgment of a barrister who is briefed late in a matter prepared for trial by another barrister differs from that of his predecessor, he is not bound to accept that barrister's skeleton argument, even if it has been prepared pursuant to a court order: see *Huntington v Secretary of State for the Environment* (1998) Times, 2 October.

3 As to the meaning of 'client' see PARA 1161 note 16.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(e). See further PARA 1219. A barrister should not mention facts which require proof and which he does not intend to prove, or which are irrelevant to the issue to be tried: see *Stevens v Webb* (1835) 7 C & P 60 at 61 per Parke B; *Duncombe v Daniell*

(1837) 8 C & P 222; *Roupell v Haws* (1863) 3 F & F 784 at 787 per Channell B; *Wallace v Cook* (1903) Times, 15 June; *Curtis v Bottomley* (1911) Times, 1 August, CA; *Lyle-Samuel v French and Pretty* (1919) Times, 1 November. A barrister should also not inform the court of facts which he has personally investigated in the course of preparing for the case; where it is desired to bring facts to the attention of the court, proper evidence should be obtained: *R v Benjamin* (1913) 8 Cr App Rep 146, CCA.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(f). An advocate is not guilty of misconduct because he takes a point which the tribunal holds to be bad, unless he is dishonest, for example if he knowingly takes a bad point concealing from the court authority which shows it clearly to be a bad point: *Abraham v Jutsun* [1963] 2 All ER 402, [1963] 1 WLR 658, CA. It is not improper to present, on instructions, a case which the advocate regards as bound to fail, but he must not assist in an abuse of process of the court (for example, by pursuing a case known to be dishonest): *Ridehalgh v Horsefield* [1994] Ch 205 at 234, [1994] 3 All ER 848 at 863, CA, per Sir Thomas Bingham MR. As to the duty of counsel who finds that he has no argument to offer in support of his case see *Earl of Beauchamp v Madresfield* (1872) LR 8 CP 245.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(g).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(i).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(h).

9 As to the meaning of 'lay client' see PARA 1155 note 2. As to a barrister's duty to his lay client generally see PARA 1170.

10 Such a matter may include the credibility of a witness: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(j).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(j).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(b). He may, however, assert such an opinion if invited to do so by the court or when appearing before a tribunal where it is his duty to do so: para 708(b); *Ryves v A-G* (1866) Annual Register p 255.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(c). If, after the conclusion of argument in a civil case, and before judgment is given, counsel discovers an authority which is directly in point, he should bring it to the attention of the judge, having first informed his opponent of his intention to do so: see Boulton *Conduct and Etiquette at the Bar* (6th Edn, 1975) p 76. In a criminal trial, counsel for both the prosecution and the defence have a duty to familiarise themselves with the court's sentencing powers and to guide the judge accordingly: *R v Street* [1997] 2 Cr App Rep (S) 309, CA.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708(d). If any procedural irregularity comes to the attention of counsel in a criminal case before the verdict is returned, he must bring it to the attention of the court at the earliest possible moment so that the judge may consider whether to discharge the jury without giving a verdict; the point should not be held in reserve with a view to taking it on appeal: *R v Neal* [1949] 2 KB 590, [1949] 2 All ER 438, CCA, per Lord Goddard CJ. Similarly, any objection to the admissibility of evidence should be taken at the time the evidence is sought to be introduced; it is not proper for counsel to raise no objection to inadmissible evidence at trial in order to preserve a ground of objection for a possible appeal: *Stirland v DPP* [1944] AC 315, [1944] 2 All ER 13, HL, per Viscount Simon LC; and *Re S* (2007) Times, 2 July.

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 708.1.

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1211. Time-keeping.

Counsel should ensure that he is present at court at whatever time the case in which he is appearing is listed to come on¹. It is not a sufficient reason for absence that counsel had to attend another court², nor that he did not suppose from the position of the case in the list that it would be reached so early³. If an order is made or judgment is given against his client in the absence of counsel, it is the court may subsequently set it aside provided that there is sufficient reason for counsel's absence⁴.

A barrister must take all reasonable and practicable steps to avoid unnecessary expense or waste of the court's time⁵. He should, when asked, inform the court of the probable length of his case, and he should also inform the court of any developments which affect information already provided⁶. Without detracting from his duty to his client⁷, counsel can and should exercise in the interests of justice as a whole a proper discretion so as not to prolong cases unnecessarily; it is no part of his duty to raise untenable points at length or to embark on lengthy cross-examination on matters that are not in truth at issue⁸.

1 *Cottam v Banks* (1847) 1 Saund & C 302. As to the duties of prosecuting counsel in criminal proceedings with regard to attendance see PARA 1223; and as to the defence see PARA 1229.

2 *Harber v Rand* (1821) 9 Price 58. A barrister is guilty of professional misconduct if having accepted two briefs he retains both although he knows or ought to know that a stage may arise when his presence will be required simultaneously in both courts and he will not be able to leave either court without breaching his duty to his client: see *Re a Barrister* [1989] NLJR 327. Where a barrister is instructed to appear before the House of Lords she is expected to be present throughout the hearing, although she should not ordinarily accept instructions to appear on a fixed date if she already has a conflicting commitment: see *Practice Statement (House of Lords: Appearance of Counsel)* [2008] 1 WLR 1143, (2008) Times, 3 June.

3 *Earl v Dowling* (1852) 19 LTOS 115.

4 See eg *Moyse v Dingle* (1854) 23 LJQB 305; *Cockle v Joyce* (1877) 7 ChD 56; *Sanders v McConnell* (1885) Times, 12 February, 5 May.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 5.11. As to the Written Standards see PARA 1150.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 5.11. Counsel should regard it as an important duty to supply the court as soon as possible with all information he can as to the probable length of his case and the possibility of adjournments and settlements, and to make every effort to be ready for trial on the day fixed: see (1959) 227 LT 101 per Lord Parker CJ.

7 As to a barrister's duty to his lay client generally see PARA 1170.

8 *R v Simmonds* [1969] 1 QB 685, [1967] 3 All ER 399n per Fenton Atkinson J. If the judge is of the view that excessive time has been taken by counsel, he may direct the taxing master (or costs judge) to have regard to the length of time taken in assessing what fees are allowable on legal aid taxation: see *R v Kalia* (1974) 60 Cr App Rep 200, CA; *R v McFadden* (1975) 62 Cr App Rep 187, 120 Sol Jo 46, CA.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(4) PROFESSIONAL PRACTICE AND CONDUCT/(v) Conduct of Cases/A. STANDARDS GENERALLY APPLICABLE/(D) Conduct in Court/1212. Presence of professional client.

1212. Presence of professional client.

A self-employed barrister¹ who is instructed by a professional client² should not conduct a case in court³ in the absence of his professional client or a representative of his professional client unless either the court rules that it is appropriate or the barrister is satisfied that the interests of the lay client⁴ and the interests of justice will not be prejudiced⁵. A self-employed barrister who attends court in order to conduct a case in circumstances where no professional client or representative of a professional client is present may, if necessary, interview witnesses and take proofs of evidence⁶.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'professional client' see PARA 1174.

3 As to the meaning of 'court' see PARA 1158 note 3.

4 As to the meaning of 'lay client' see PARA 1155 note 2.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 706. As to the Code of Conduct see PARA 1150.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 707. A self-employed barrister may not, generally, investigate or collect evidence for use in any court: see para 401(b)(iii); and PARA 1160. See also PARAS 1206-1209.

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1213. Examination of witnesses.

Counsel has the right to choose which witnesses to call and the order in which to call them¹, and is entitled to present his case without undue interference from the judge², although his powers in this regard are subject to the general rules governing examination in chief and cross-examination³.

1 *Briscoe v Briscoe* [1968] P 501, [1966] 1 All ER 465, DC; *R v Edwards, Underwood and Edwards* (1848) 11 LTOS 50 (discretion of prosecuting counsel); *Barnes v BPC (Business Forms) Ltd* [1976] 1 All ER 237, [1975] 1 WLR 1565. It is improper for counsel to offer to call a witness after his case is closed for the sole purpose of avoiding adverse comment: *Practice Note* [1952] WN 532. As to the authority of counsel to decide which witnesses to call see PARA 1136.

2 Compare *R v Clewer* (1953) 37 Cr App Rep 37 and *R v Hircock* [1970] 1 QB 67, [1969] 1 All ER 47, CA (criminal proceedings); and see *Jones v National Coal Board* [1957] 2 QB 55, [1957] 2 All ER 155, CA (civil proceedings).

3 See **CIVIL PROCEDURE** vol 11 (2009) PARA 1037 et seq. A leader has a right to interpose during the examination of a witness by his junior and take over the examination: *Doe v Roe* (1809) 2 Camp 280.

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1214. Taking notes of evidence and judgment.

Where, by reason of a breakdown in the recording apparatus, there is a defect in the transcript of evidence in a case which is the subject of an appeal, it is the duty of counsel on each side to assist so far as they reasonably can by agreeing a record of the missing evidence¹. It is also the duty of counsel on each side to take a note of judgment for the information of the appeal court in the event of an appeal².

1 *James P Corry & Co Ltd v Clarke* [1967] NI 62, CA. When not engaged in examining witnesses, junior counsel on each side should take a note of the evidence: *Earl De la Warr v Miles* (1881) 19 ChD 80 at 83 per Lush J; *Malins v Price* (1845) 1 Ph 590. Cf *Cattell v Corral* (1839) 3 Y & C Ex 413 (counsel's notes admitted as evidence of what took place at an earlier hearing).

2 *Ex p Skerratt* (1884) 28 Sol Jo 376, CA. See also *Practice Note* [1943] WN 80 (on appeal from the county court, counsel should agree a note of the judgment); *Sims v Wilson* [1946] 2 All ER 261, CA; *Bruen v Bruce* [1959] 2 All ER 375, [1959] 1 WLR 684, CA (note agreed between counsel should be submitted to the judge for approval); *Coard v AG of Grenada* [2007] UKPC 7, [2007] 3 LRC 679.

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1215. Court dress and business suits.

It has been the general rule that barristers are required when appearing in open court to wear robes (or 'court dress'¹) whenever the judge wears robes². The Bar Council has recently issued guidance on the matter, specifying the occasions on which either court dress or business suits³ are appropriate⁴.

Court dress should be worn in all hearings before the House of Lords and its Appellate Committees, the Privy Council, all hearings in open court in the Court of Appeal⁵ and in the Crown Court⁶, trials in the county courts⁷, and in any case where the liberty of the subject is at issue⁸. Court dress is also appropriate before legislative proceedings and committees of either House of Parliament⁹, the International Court of Justice¹⁰, the European Court of Justice¹¹, and courts-martial¹². Dress in the High Court depends on the particular court and type of hearing¹³. Business suits should be worn for bail applications in the Crown Court¹⁴, applications in the county court¹⁵, before a magistrates' court¹⁶, coroner's court¹⁷, and, generally, before masters, registrars and district judges¹⁸.

A barrister's personal appearance in court must be decorous and his dress, when robes are worn, should be compatible with them¹⁹.

1 Court dress consists of a wig and gown, with bands, or collarettes, on a wing collar: see the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 11. Queen's Counsel wear a short wig and a silk (or stuff) gown over a court coat, while junior counsel wear a short wig and stuff gown. For Queen's Counsel the silk gown is the correct gown except when the court is in mourning: Annual Statement 1925 p 8. Traditionally a junior barrister carries his robes in a blue bag until such time as he is given a red bag by a Queen's Counsel in recognition of able assistance in the conduct of a case: Annual Statement 1952 p 26. As to Queen's Counsel see PARA 1124. When appearing before the House of Lords in the chamber of the House, however, Queen's Counsel wear full-bottomed wigs: Annual Statement 1964 p 32. This practice does not apply to the committee rooms of the House. As from a day to be appointed the Supreme Court is renamed the Senior Courts: see the Constitutional Reform Act 2005 s 59(1), Sch 11 Pt 1; and **COURTS**. At the date at which this volume states the law no such day had been appointed.

2 See *R v Whittaker* (1844) 8 JP Jo 390. 'Robes are convenient in normal circumstances as an indication of the functions of those engaged in the proceedings, and as enhancing the formality and dignity of a grave occasion; in their appearance they also lessen visual differences of age, sex and clothing, and so aid concentration on the real issues without distraction; but they are not essential, and the court may dispense with them where there is good reason': *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark* [1973] Ch 323 at 330, [1973] 2 All ER 1155 at 1160-1161 per Megarry J. Robes should not be worn by a barrister who appears on his own behalf: see PARA 1118. Pupils attending court during their first six months of pupillage are entitled, but not required, to be robed: Annual Statement 1966 p 36. Barristers are required to be robed when appearing before the House of Lords, where the bar robes, but the judges do not.

3 'Business suits' means dark formal non-court dress: see the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 11.

4 See generally the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008).

5 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 4.

6 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 9.

7 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 6.

8 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 10. This is not the case in the magistrates' court and during Crown Court bail applications which are held in chambers: para 10.

9 It is not, however, customary for a barrister to robe in a parliamentary committee room nor in the 'corridor' unless actually engaged in a Bill which is being heard or which is just about to come on: Annual Statement 1924 p 8.

10 Annual Statement 1924 p 8.

11 A non-practising barrister, however, who appears before the court as an 'agent' or 'adviser' and not as a 'lawyer entitled to practise before a court of a member state' should not be robed as counsel but should wear the robes made available by the court: Annual Statement 1976-77 p 26. As to appearance before the European Court of Justice see PARA 1121.

12 Annual Statement 1904-05 p 11. Barristers should not, however, robe before a United States court-martial: Annual Statement 1953 p 22.

13 In the High Court counsel must dress as follows:

- 547 (1) in the Commercial Court, Admiralty Court and Technology Court business suits on all occasions;
- 548 (2) in the Chancery Division court dress for all trials and appeals and business suits for all other occasions;
- 549 (3) in the Family Division court dress for all contested divorce/nullity proceedings and business suits for all other occasions;
- 550 (4) in the Administrative Court court dress on all occasions;
- 551 (5) in the Queen's Bench Division, on occasions not already covered, court dress for trials and business suits for all other occasions: see the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 5.

It is not necessary to robe in chambers; nor where the court adjourns the hearing to some place other than a court: see *St Edmundsbury and Ipswich Diocesan Board of Finance v Clark* [1973] Ch 323, [1973] 2 All ER 1155.

14 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 9.

15 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 6. This includes all interim and final hearings in children and ancillary financial relief cases: para 6.

16 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 8.

17 Annual Statement 1924 p 8.

18 See the Guidance from the Chairman of the Bar Council: Court Dress (31 July 2008) para 7. In the Chancery Division, in hearings before masters, registrars and district judges, counsel must wear business suits where the hearing takes place in the judges room, and court dress where the hearing takes place in court: para 7.

19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 5.12. As to the Written Standards see PARA 1150.

UPDATE

1215 Court dress and business suits

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

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(E) ADVERTISING AND MEDIA COMMENT

1216. Advertising and publicity.

Subject to specific restrictions¹, a practising barrister² may engage in any advertising or promotion in connection with his practice which conforms to the British Codes of Advertising and Sales Promotion³. This may include photographs or other illustrations of the barrister⁴, statements of rates and methods of charging⁵, statements about the nature and extent of the barrister's services⁶, and information about any case in which the barrister has appeared⁷.

Such advertising or promotion, however, must not:

- 1737 (1) be inaccurate or likely to mislead⁸;
- 1738 (2) be likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute⁹;
- 1739 (3) make direct comparisons in terms of quality with or criticisms of other identifiable persons¹⁰;
- 1740 (4) include statements about the barrister's success rate¹¹;
- 1741 (5) indicate or imply any willingness to accept instructions¹² or any intention to restrict the persons from whom instructions may be accepted otherwise than in accordance with the Code of Conduct of the Bar¹³; or
- 1742 (6) be so frequent or obtrusive as to cause annoyance to those to whom it is directed¹⁴.

1 le those referred to in the text and notes 8-14.

2 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.1. As to the Code of Conduct see PARA 1150. The Codes of Advertising and Sales Promotion are prepared, revised and published by the Committee of Advertising Practice.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.1(a).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.1(b).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.1(c).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.1(d). Such information may be included only if it has already become publicly available or, where it has not already become publicly available, with the express prior written consent of the lay client; and the information may include the name of any client for whom the barrister acted: para 710.1(d). As to the meaning of 'lay client' see PARA 1155 note 2.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.2(a).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.2(b).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.2(c). This is not restricted to identifiable persons who are barristers but includes members of any other profession: para 710.2(c).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.2(d).

- 12 As to the meaning of 'instructions' see PARA 1164 note 4.
- 13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.2(e). As to the persons from whom instructions may and may not be accepted see PARAS 1173-1176.
- 14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 710.2(f).

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1217. Media comment.

A practising barrister¹ must not, in relation to any anticipated or current proceedings in which he is briefed or expects to appear or has appeared as an advocate, express a personal opinion to the press or other media or in any other public statement upon the facts or issues arising in the proceedings².

However, there is nothing to prevent a barrister informing the press about his client's view of the proceedings or what his client is seeking to achieve, providing that the client has agreed to whatever is said on his behalf. Similarly, there is nothing to prevent a barrister informing the press of the facts of a particular case or of the particular legal issues that will be discussed³. Finally, a practising barrister may express an opinion on an issue in an educational or academic context⁴. In all of these cases, a barrister must bear in mind his duty of confidentiality and the law of privilege⁵, and the general duty to avoid bringing the legal profession or the administration of justice into disrepute⁶.

1 As to the meaning of 'practising barrister' see PARA 1152 note 2. As to what constitutes practice as a barrister see PARA 1152 et seq.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 709.1.

3 See the Bar Standards Board Guidance 'Commenting to the media on cases'.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 709.2. A barrister could, for example, write an academic article about the likely impact of a case in which he has been involved and include his own views on this: see the Bar Standards Board Guidance 'Commenting to the media on cases'.

5 As to the duty of confidentiality see PARA 1201; and as to legal professional privilege see PARA 1146.

6 See the Bar Standards Board Guidance 'Commenting to the media on cases'. As to the duty not to bring the legal profession or administration of justice into disrepute see PARA 1168.

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B. STANDARDS APPLICABLE TO CRIMINAL CASES

(A) GUIDANCE

1218. Standards Applicable to Criminal Cases.

The Bar Standards Board¹ has published written standards for the conduct of professional work which specifically relate to practice in the criminal courts². These include standards applicable to prosecuting counsel³, to defence counsel⁴, and to counsel generally whether acting for prosecution or defence⁵.

1 The Written Standards were published by the Bar Council (as to which see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

2 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work paras 9-16 (Standards Applicable to Criminal Cases). The Standards Applicable to Criminal Cases are to be read together with the general standards in the Written Standards for the Conduct of Professional Work (paras 1-8) and the main provisions of the Code of Conduct of the Bar; they are not an alternative: Written Standards for the Conduct of Professional Work para 9.1. As to the Code of Conduct and the Written Standards see PARA 1150.

3 See PARAS 1219-1224. These principles and standards apply as appropriate to all practising barristers, whether in independent practice or employed and whether appearing as counsel in any given case or exercising any other professional capacity in connection with it: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10A.

4 See PARAS 1225-1233.

5 See PARAS 1234-1237.

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(B) RESPONSIBILITIES OF PROSECUTING COUNSEL

1219. General responsibilities.

Prosecuting counsel should not attempt to obtain a conviction by all means at his command¹. He should not regard himself as appearing for a party. He should lay before the court² fairly and impartially the whole of the facts which comprise the case for the prosecution and should assist the court on all matters of law applicable to the case³. He should bear in mind at all times whilst he is instructed⁴ that he is responsible for the presentation and general conduct of the case and that he should use his best endeavours to ensure that all evidence or material that ought properly to be made available is either presented by the prosecution or disclosed to the defence⁵.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.1. As to Bar Council guidance see PARA 1150. As to the Standards Applicable to Criminal Cases see PARA 1218. See also *R v Thursfield* (1838) 8 C & P 269; *R v Puddick* (1865) 4 F & F 497 at 499 (counsel for the prosecution ought to regard themselves as ministers of justice and not struggle for a conviction); *R v Webb* (1865) 4 F & F 862; *R v Banks* [1916] 2 KB 621; *R v Thomas (No 2)* [1974] 1 NZLR 658; *Randall v R* [2002] UKPC 19 at [10], [2002] 1 WLR 2237 at [10] per Lord Bingham of Cornhill; *Benedetto v R* [2003] UKPC 27, [2003] 1 WLR 1545.

2 As to the meaning of 'court' see PARA 1158 note 3.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.1.

4 As to the meaning of 'instructed' see PARA 1164 note 4.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.2. For the general duty in this regard see PARA 1210.

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1220. Duties relating to indictments, witness statements etc.

In relation to cases tried in the Crown Court prosecuting counsel must:

- 1743 (1) ensure, if he is instructed to settle an indictment, that he does so promptly and within due time, and should bear in mind the desirability of not overloading an indictment with either too many defendants or too many counts, in order to present the prosecution case as simply and as concisely as possible¹. If the indictment is being settled by some other person, counsel should ask to see a copy of it, which he should check²;
- 1744 (2) decide whether any additional evidence is required and, if it is, should advise in writing and set out precisely what additional evidence is required with a view to serving it on the defence as soon as possible³;
- 1745 (3) consider whether all witness statements in the possession of the prosecution have been properly served on the defendant in accordance with the Attorney General's guidelines⁴;
- 1746 (4) eliminate all unnecessary material in the case so as to ensure an efficient and fair trial, and in particular should consider the need for particular witnesses and exhibits, and draft appropriate admissions for service on the defence⁵;
- 1747 (5) in complex cases draft a case summary for transmission to the court⁶.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.4(a). As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.4(b).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.4(c).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.4(d). As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.4(e).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.4(f).

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1221. Pre-trial witness interviews.

The general principle is that it is wholly inappropriate for a barrister in a contested criminal case in the Crown Court to interview any potential witness or discuss with him the substance of his evidence or that of other witnesses¹. This principle may, however, be departed from in extraordinary circumstances². In addition, prosecution counsel may, if instructed to do so, interview potential witnesses for the purposes of, and in, accordance with the practice set out in the Code for pre-trial witness interviews³.

1 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.3.1; and PARA 1237.

2 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.3.3; and *R v Fergus* (1993) 98 Cr App Rep 313, CA.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.3.2. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218. As to the Code for pre-trial witness interviews, which is issued by the Director of Public Prosecutions, see the Crown Prosecution Service website. As to the Director of Public Prosecutions see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529; **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

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1222. Disagreement with professional client and changing of advice.

Where prosecuting counsel has taken a decision on a matter of policy with which his professional client¹ has not agreed, it is appropriate for him to submit to the Attorney General² a written report of all the circumstances, including his reasons for disagreeing with those who instructed him³. When prosecuting counsel has had an opportunity to prepare his brief⁴, and to confer with those instructing him, but at the last moment before trial unexpectedly advises that the case should not proceed or that pleas to lesser offences should be accepted, and his professional client does not accept such advice, counsel should apply for an adjournment if instructed to do so⁵.

Subject to the matters dealt with above, it is for prosecuting counsel to decide whether to offer no evidence on a particular count or on the indictment as a whole and whether to accept pleas to a lesser count or counts⁶.

1 As to the meaning of 'professional client' see PARA 1174.

2 As to the Attorney General see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 529.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.6(a). As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218. As to the meaning of 'instructed' see PARA 1164 note 4. The provisions of para 10.6(a)-(c) derive from the report of the Farquharson Committee on the role of Prosecuting Counsel (1986).

4 As to the meaning of 'brief' see PARA 1164 note 4.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.6(b). See note 3.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.6(c). See note 3.

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1223. Duty to attend court.

In addition to a barrister's general duty of attendance at court¹, prosecuting counsel is expected to be present throughout the trial, including the summing up and the return of the jury². He may not absent himself without leave of the court, although if two or more barristers appear for the prosecution, the attendance of one is sufficient³.

1 As to a barrister's general duty to attend court see PARA 1211.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.1. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.1.

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1224. Duty in respect of summing up and sentencing.

It is the duty of prosecuting counsel to assist the court at the conclusion of the summing up by drawing attention to any apparent errors or omissions of fact or law¹.

In relation to sentence, prosecuting counsel must:

- 1748 (1) not attempt by advocacy to influence the court with regard to sentencing; if, however, a defendant is unrepresented it is proper to inform the court of any mitigating circumstances about which counsel is instructed²;
- 1749 (2) be in a position to assist the court if requested as to any statutory provisions relevant to the offence or the offender and as to any relevant guidelines as to sentence laid down by the Court of Appeal³, and bring any such matters to the attention of the court if in counsel's opinion the court has erred⁴;
- 1750 (3) bring to the attention of the court any appropriate compensation, forfeiture and restitution matters which may arise on conviction⁵; and
- 1751 (4) draw the attention of the defence to any assertion of material fact made in mitigation which the prosecution believes to be untrue⁶; if the defence persists in the assertion, he should invite the court to consider requiring the issue to be determined by the calling of evidence⁷.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.7; and see *Payne v Ibbotson* (1858) 27 LJ Ex 341; *R v Kams* (1910) 4 Cr App Rep 8, CCA; *R v Mowbray* (1912) 8 Cr App Rep 8, CCA; *R v Southgate* [1963] 2 All ER 833n, [1963] 1 WLR 809n, CA; *R v Lang-Hall* (1989) Times, 24 March, CA; *R v McVey* [1988] Crim LR 127, CA; *R v Roberts* [1992] Crim LR 375, CA. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.8(a). As to the meaning of 'instructed' see PARA 1164 note 4.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.8(b). Counsel has a duty to familiarise himself with the court's sentencing powers and to guide the judge accordingly: *R v Street* [1997] 2 Cr App Rep (S) 309, CA. See also *R v Webb (A-G's Reference No 52 of 2003)* [2003] EWCA Crim 3731, [2004] Crim LR 306.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.8(c).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.8(d).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.8(e). Counsel for the defence should notify the prosecution in advance as to anything which he is instructed to submit in mitigation which casts aspersions on the conduct or character of a victim or witness in the case, so as to give prosecuting counsel sufficient opportunity to consider his position in this regard: see para 11.2(k).

7 In accordance with *R v Newton* (1982) 77 Cr App Rep 13, 4 Cr App Rep (S) 388, CA (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1354): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 10.8(e).

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(C) RESPONSIBILITIES OF DEFENCE COUNSEL

1225. General responsibilities.

When defending a client on a criminal charge, a barrister must endeavour to protect his client from conviction except by a competent tribunal and upon legally admissible evidence sufficient to support a conviction for the offence charged¹. He should advise his lay client generally about his plea and may, if necessary, express his advice in strong terms; he must, however, make it clear that the client has complete freedom of choice and that the responsibility for the plea is the client's². He should advise his client as to whether or not to give evidence in his own defence but the decision must be taken by the client himself³.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.1. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.3.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.4. As to an advocate's duty to advise his client on the alternatives prior to the making of a decision not to give evidence, and as to the consequences of not giving evidence, see *Sankar v Trinidad and Tobago* [1995] 1 All ER 236, [1995] 1 WLR 194, PC.

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1226. Preparing the defence.

A barrister acting for the defence should:

- 1752 (1) satisfy himself, if he is briefed to represent more than one defendant, that no conflict of interest is likely to arise¹;
- 1753 (2) arrange a conference or, if necessary, a series of conferences with his professional² and lay clients³;
- 1754 (3) consider whether any inquiries or further inquiries are necessary and, if so, advise in writing as soon as possible⁴;
- 1755 (4) consider whether any witnesses for the defence are required and, if so, which⁵;
- 1756 (5) consider whether a Notice of Alibi is required and, if so, draft an appropriate notice⁶;
- 1757 (6) consider whether it would be appropriate to call expert evidence for the defence and, if so, have regard to the rules of the Crown Court in relation to notifying the prosecution of the contents of the evidence to be given⁷;
- 1758 (7) ensure that he has sufficient instructions for the purpose of deciding which prosecution witnesses should be cross-examined, and then ensure that no other witnesses remain fully bound at the request of the defendant and request his professional client to inform the Crown Prosecution Service of those who can be conditionally bound⁸;
- 1759 (8) consider whether any admissions can be made with a view to saving time and expense at trial, with the aim of admitting as much evidence as can properly be admitted in accordance with the barrister's duty to his client⁹;
- 1760 (9) consider what admissions can properly be requested from the prosecution¹⁰;
- 1761 (10) decide what exhibits, if any, which have not been or cannot be copied he wishes to examine, and ensure that appropriate arrangements are made to examine them as promptly as possible so that there is no undue delay in the trial¹¹; and
- 1762 (11) notify the prosecution in advance as to anything which he is instructed to submit in mitigation which casts aspersions on the conduct or character of a victim or witness in the case¹².

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(a). As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218. For the duty of a barrister to refuse to accept instructions where a conflict of interest arises see PARA 1187; and for the duty to withdraw from a case on account of a conflict of interest see PARA 1192.

2 As to the meaning of 'professional client' see PARA 1174.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(b). As to the meaning of 'lay client' see PARA 1155 note 2.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(c).

- 5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(d).
- 6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(e).
- 7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(f).
- 8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(g).
- 9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(h). As to a barrister's general duty to his client see PARA 1170.
- 10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(i).
- 11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(j).
- 12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.2(k). This is to give prosecuting counsel sufficient opportunity to consider his position in relation to any assertion of material fact which the prosecution believes to be untrue: para 11.2(k).

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1227. Advising on guilty pleas by not guilty clients.

Where a defendant tells his counsel that he did not commit the offence with which he is charged but nevertheless insists on pleading guilty to it for reasons of his own, counsel should advise the defendant that, if he is not guilty, he should plead not guilty, but that the decision is one for the defendant¹; he should also explore with the defendant why he wishes to plead guilty to a charge of an offence which he says he did not commit and whether any steps could be taken which would enable him to enter a plea of not guilty in accordance with his profession of innocence². If the client maintains his wish to plead guilty, he should be further advised as to what the consequences will be³ and that what can be submitted on his behalf in mitigation can only be on the basis that he is guilty⁴.

If, following all of this advice, the defendant persists in his decision to plead guilty, counsel may continue to represent him if he is satisfied that it is proper to do so⁵. Before a plea of guilty is entered, counsel or a representative of his professional client⁶ should record in writing the reasons for the plea⁷, and the defendant should be invited to indorse a declaration that he has given unequivocal instructions of his own free will that he intends to plead guilty even though he maintains that he did not commit the offence and that he understands the advice given by counsel and in particular the restrictions placed on counsel in mitigating and the consequences to himself⁸. The defendant should also be advised that he is under no obligation to sign⁹. If no declaration is signed, counsel should make a contemporaneous note of his advice¹⁰.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.1(a). As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.1(b).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.2(a). Counsel should advise in particular on the consequences of gaining or adding to a criminal record and that it is unlikely that a conviction based on such a plea would be overturned on appeal: para 11.5.2(a).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.2(b). Counsel should also advise that what can be submitted will otherwise be strictly limited so that, for instance, counsel will not be able to assert that the defendant has shown remorse through his guilty plea: para 11.5.2(b).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.3(a).

6 As to the meaning of 'professional client' see PARA 1174.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.3(b).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.3(c).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.3(d).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 11.5.3(e).

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1228. Client's confessions.

In considering the duty of counsel retained to defend a person charged with a criminal offence who confesses to his counsel that he did commit the offence charged, it is essential to bear in mind that:

- 1763 (1) every punishable crime is a breach of common or statute law committed by a person of sound mind and understanding¹;
- 1764 (2) the issue in a criminal trial is always whether the defendant is guilty of the offence charged, never whether he is innocent²; and
- 1765 (3) the burden of proof rests on the prosecution³.

It follows that the mere fact that a person charged with a crime has confessed to his counsel that he did commit the offence charged is no bar to that barrister appearing or continuing to appear in his defence, and nor does such a confession release the barrister from his imperative duty to do all that he honourably can for his client⁴. Such a confession, however, imposes very strict limitations on the conduct of the defence: a barrister must not assert as true that which he knows to be false, and he must not connive at, much less attempt to substantiate, a fraud⁵. While therefore it would be right to take any objections to the competency of the court, to the form of the indictment, or to the admissibility of any evidence or to the evidence admitted, a barrister must not set up an affirmative case inconsistent with the confession made to him⁶. As regards the extent to which counsel may attack the evidence for the prosecution either in cross-examination or in his speech to the tribunal charged with the decision on the facts, no clearer rule can be laid down than this: that he is entitled to test the evidence given by each individual witness and to argue that the evidence taken as a whole is insufficient to amount to proof that the defendant is guilty of the offence charged; further than this he ought not to go⁷.

This is based on the assumption that the defendant has made a clear confession that he did commit the offence charged and does not deal with the difficult questions that may arise where the defendant has made a series of inconsistent statements to a barrister or has made statements which point irresistibly to the conclusion that he is guilty but do not amount to a clear confession⁸. Statements of this kind may inhibit the defence, but questions arising on them can only be answered after careful consideration of the actual circumstances of the particular case⁹.

¹ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.1(a). As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

² Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.1(b).

³ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.1(c).

⁴ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.2.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.3.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.4. For example, it would be wrong for counsel to suggest, whether by calling the defendant or otherwise, that some other person had committed the offence charged, or to call any evidence which he must know to be false having regard to the confession, such as evidence in support of an alibi: para 12.4.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.5.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.6.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 12.6.

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1229. Duty to attend court.

In addition to a barrister's general duty of attendance at court¹, defence counsel should ensure that his client is never left unrepresented at any stage of his trial².

Where a defendant is represented by one barrister, that barrister should normally be present throughout the trial and should only absent himself in exceptional circumstances which he could not reasonably be expected to foresee³.

Where a defendant is represented by two barristers, neither may absent himself except for good reason and then only when the consent of the professional client (or his representative) and of the lay client has been obtained, or when the case is legally aided and the barrister thinks it necessary to do so in order to avoid unnecessary public expense⁴.

These rules are subject to modification in respect of lengthy trials involving numerous defendants⁵. In such trials, a defending counsel may with the consent of the professional client (or his representative) and of the lay client absent himself from any specific part of the trial if after the conclusion of the opening speech by the prosecution he is satisfied that during that part of the trial there is no serious possibility that events will occur which will relate to his client⁶. If he does this, it is counsel's duty to arrange for other defending counsel to guard the interests of his client⁷, to keep himself informed throughout of the progress of the trial and in particular of any development which could affect his client⁸, and not to accept any other commitment which would render it impracticable for him to make himself available at reasonable notice if the interests of his client so require⁹.

1 As to barristers' general duty to attend court see PARA 1211.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.2.1. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218. As to the duty never to leave a client unrepresented see *Re a Barrister* [1989] NLJR 327.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.2.2. Even in such exceptional circumstances, the barrister should not absent himself unless he has obtained the consent of the professional client (or his representative) and the lay client, and a competent deputy takes his place: para 15.2.2. As to the meaning of 'professional client' see PARA 1174. As to the meaning of 'lay client' see PARA 1155 note 2.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.2.3.

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 15.2.4.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.2.4. Counsel should also inform the judge: para 15.2.4.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.2.4(a).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.2.4(b).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.2.4(c).

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1230. Duty when defendant absconds.

If during the course of a criminal trial and prior to final sentence the defendant voluntarily absconds and the barrister's professional client¹ withdraws from the case, then the barrister too should withdraw². If the trial judge requests the barrister to remain to assist the court, the barrister has an absolute discretion whether or not to do so³. If he does remain, he should act on the basis that his instructions⁴ are withdrawn and he will not be entitled to use any material contained in his brief⁵, save for such part as has already been established in evidence before the court; he should request the trial judge to instruct the jury that this is the basis on which he is prepared to assist the court⁶.

If for any reason the barrister's professional client does not withdraw from the case, the barrister retains an absolute discretion whether to continue to act⁷. If he does continue, he should conduct the case as if his client were still present in court but had decided not to give evidence and on the basis of any instruction he has received⁸. He will be free to use any material contained in his brief and may cross-examine witnesses called for the prosecution and call witnesses for the defence⁹.

1 As to the meaning of 'professional client' see PARA 1174.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.3.1. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.3.1.

4 As to the meaning of 'instructions' see PARA 1164 note 4.

5 As to the meaning of 'brief' see PARA 1164 note 4.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.3.1.

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.3.1.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.3.2.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 15.3.2. Counsel is entitled to 'ask questions of witnesses for the prosecution in as much detail as he wishes based on his instructions, but without indicating what the appellant's evidence might have been and in the knowledge that he would not be able to call evidence to contradict the answers given . . . in the hope of either showing that his absent client's instructions were accepted by the witnesses or casting doubt upon the coherence or accuracy of their account: see *R v Kepple* [2007] EWCA Crim 1339 at [27], [2007] All ER (D) 107 (Jun) at [27] per Thomas LJ. Counsel's right, in accordance with the duty contained in the Written Standards para 15.3.2, to cross-examine is an important safeguard to the fairness of the trial to be conducted in the absence of the appellant: see *R v Kepple* at [22].

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1231. Duty in respect of summing-up and sentencing.

It is the duty of defence counsel to draw to the attention of the court an error or omission made in summing up of which counsel is aware¹; if counsel fails to do so, it may be difficult to rely on the error as a ground of appeal².

It is the duty of defence counsel, as well as counsel for the prosecution, to ensure that sentences imposed and orders made are within the powers of the court, and defence counsel should accordingly bring the matter to the attention of the court and invite the court to vary the sentence if aware that an unlawful sentence has been passed³. Counsel must also be ready to assist the judge on the relevant law, if asked. Thus counsel must inform themselves before a case starts of the sentencing powers of the court for all offences charged including the maximum sentence and the court's powers in relation to ancillary orders, such as costs and compensation orders⁴.

1 See *R v Langford* (2001) Times, 12 January, CA. Compare *R v Cocks* (1976) 63 Cr App Rep 79, CA; *R v Edwards* (1983) 77 Cr App Rep 5, CA; *R v Holden* [1991] Crim LR 478, CA. It is submitted that there is no difference in principle between an error in summing-up and a procedural irregularity. As to procedural irregularity see PARA 1210.

2 As to the duty of counsel for the prosecution see PARA 1224.

3 *R v Komsta* (1990) 12 Cr App Rep (S) 63; *R v Hartrey* [1993] Crim LR 230, CA; *R v Bruley* [1996] Crim LR 913, CA; *A-G's Reference (No 7 of 1997)* [1998] 1 Cr App Rep (S) 268, CA; *R v Blight* [1999] Crim LR 426, CA.

4 *R v Clarke* (1974) 59 Cr App Rep 298, CA; *R v Bruley* [1996] Crim LR 913, CA.

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1232. Advice concerning appeals.

If his client pleads guilty or is convicted, defence counsel should see him after he has been sentenced in the presence of his professional client¹ or his representative². If counsel is satisfied that there are no reasonable grounds of appeal, he should so advise orally and certify in writing³. No further advice is necessary unless it is reasonable for a written advice to be given because the client reasonably requires it or because it is necessary⁴.

If counsel is satisfied that there are more reasonable grounds of appeal or if his view is a provisional one or if he requires more time to consider the prospects of a successful appeal, he should so advise orally and certify in writing⁵; he should then furnish written advice to the professional client as soon as he can and in any event within 14 days⁶.

1 As to the meaning of 'professional client' see PARA 1174.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218. When advising after a client pleads guilty or is convicted, defence counsel is encouraged to follow the procedures set out in the Guide to Proceedings in the Court of Appeal Criminal Division (the 'Guide') paras 1.2, 1.4 (see (1983) 77 Cr App Rep 138): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work paras 16.1.1, 16.1.2.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2(a). Counsel is encouraged to certify using the form set out in Appendix 1 to the Guide: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2(a). As to grounds for appeal see PARA 1233.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2(a). Written advice may be necessary, for example, in the light of the circumstances of the conviction, any particular difficulties at trial, the length and nature of the sentence passed, the effect thereof on the defendant, or the lack of impact which oral advice given immediately after the trial may have on the particular defendant's mind: para 16.2(a).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2(b). Counsel is encouraged to certify using the form set out in Appendix 1 to the Guide: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2(b).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2(b).

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1233. Grounds for appeal.

Counsel should not settle grounds of appeal unless he considers that such grounds are properly arguable, and in that event he should provide a reasoned written opinion in support of such grounds¹. If counsel is unable to perfect grounds of appeal without a transcript or other further information, the grounds of appeal should be accompanied by a note to the registrar setting out the matters on which assistance is required; and once the transcript or other information has been made available, counsel should ensure that the grounds of appeal are perfected by the inclusion of all necessary references². Grounds of appeal must be settled with sufficient particularity to enable the registrar and subsequently the court to identify clearly the matters relied upon³.

If at any stage counsel is of the view that the appeal should be abandoned, he should at once set out his reasons in writing and send them to his professional client⁴.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.3. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.4.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.5.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.6. As to the meaning of 'professional client' see PARA 1174.

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(D) RESPONSIBILITIES OF BOTH COUNSEL

1234. Case management and organisation.

Both prosecuting and defence counsel in criminal cases should:

- 1766 (1) ensure that the listing officer receives in good time their best estimate of the likely length of the trial (including whether or not there is to be a plea of guilty) and is given early notice of any change of such estimate or possible adjournment¹;
- 1767 (2) take all reasonable and practicable steps to ensure that the case is properly prepared and ready for trial by the time that it is first listed²;
- 1768 (3) ensure that arrangements have been made in adequate time for witnesses to attend court as and when required and plan, so far as possible, for sufficient witnesses to be available to occupy the full court day³;
- 1769 (4) if there is a witness who can only attend court at a certain time during the trial without great inconvenience to himself, try to arrange for that witness to be accommodated by raising the matter with the trial judge and with his opponent⁴; and
- 1770 (5) take all necessary steps to comply with the practice direction concerned with the tape recording of police interviews⁵.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 13.1(a). As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 13.1(b).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 13.1(c).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 13.1(d).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 13.1(e). As to the practice direction concerned with the tape recording of police interviews see *Practice Note* [1989] 2 All ER 415, sub nom *Practice Direction* [1989] 1 WLR 631, 89 Cr App Rep 132, CA; and as to the audio recording of police interviews generally see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(2) (2006 Reissue) PARA 971 et seq.

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1235. Attendance at plea and directions hearings.

The barrister originally briefed in a case, if properly remunerated¹, should attend all plea and directions hearings². If this is not possible, he must take all reasonable steps to ensure that the barrister who does appear is conversant with the case and is prepared to make informed decisions affecting the trial³.

1 As to barristers' remuneration see PARAS 1296-1316.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 13.2. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 13.2.

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1236. Duties with regard to video recordings of evidence.

A barrister who is instructed¹ and is acting for the prosecution or the defence and who has in his possession a copy of a video recording of a child witness which has been identified as having been prepared to be admitted in evidence at a criminal trial² must have regard to a number of duties. Upon receipt of the recording, a written record of the date and time and from whom the recording was received must be made and a receipt must be given³. The recording and its contents may be used only for the proper preparation of the prosecution or defence case or of an appeal against conviction or sentence (or both), as the case may be, and the barrister must not make or permit any disclosure of the recording or its contents to any person except when, in his opinion, it is in the interests of his proper preparation of that case⁴. The barrister may not make or permit any other person to make a copy of the recording, nor release the recording to the accused; and he must ensure that the recording is always kept in a locked or secure place when not in transit or in use and that, when in transit, the recording is kept safe and secure at all times and is not left unattended, especially in vehicles or otherwise⁵.

If proper preparation of the case involves viewing of the recording in the presence of the accused, this should be done, if the accused is in custody, only in the prison or other custodial institution where the accused is being held, in the presence of the barrister or his instructing solicitor (or both)⁶; or, if the accused is on bail, at the solicitor's office or in counsel's chambers or elsewhere, in the presence of the barrister or his instructing solicitor (or both)⁷. The recording must be returned to the solicitor as soon as practicable after the conclusion of the barrister's role in the case, and a written record of the date and time of despatch and to whom the recording was delivered for despatch must be made⁸.

1 As to the meaning of 'instructed' see PARA 1164 note 4.

2 In accordance with the Criminal Justice Act 1988 s 32A (repealed). Video recording of child witnesses is now governed by the Youth Justice and Criminal Evidence Act 1999 ss 27, 28; see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1425-1426.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 14.1(a). As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 14.1(b).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 14.1(c).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 14.1(d)(i). As to the meaning of 'solicitor' see PARA 1063 note 14.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 14.1(d)(ii).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 14.1(e).

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1237. Witness interviews in contested criminal cases.

Although there is no rule which prevents a barrister from having contact with witnesses for the purpose of interviewing them¹, as a general principle it is wholly inappropriate for a barrister in a contested criminal case in the Crown Court to interview any potential witness, with the exception of the lay client², character witnesses and expert witnesses³. There may, however, be extraordinary circumstances in which a departure from this principle is unavoidable⁴.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 16.2.2. As to the Written Standards see PARA 1150. As to the standards applicable to criminal cases see PARA 1218.

2 As to the meaning of 'lay client' see PARA 1155 note 2.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.3.1. For these purposes, 'interviewing' includes discussing with any potential witness the substance of his evidence or the evidence of other such witnesses: para 6.3.1. Where any barrister has interviewed any potential witness or any such witness has been interviewed by another barrister, that fact should be disclosed to all other parties in the case before the witness is called and a written record made of the substance of the interview and the reason for it: para 6.3.4.

4 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Written Standards for the Conduct of Professional Work para 6.3.3; and *R v Fergus* (1993) 98 Cr App Rep 313, CA. As to prosecution counsel's right to interview potential witnesses see para 6.3.2; and PARA 1221.

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(vi) Administration of Practice

1238. Location and nature of practice.

A self-employed barrister¹ must not practise from the office of or in any unincorporated association² with any person other than a self-employed barrister, a registered European lawyer³, a foreign lawyer⁴, a non-practising barrister⁵ or a person of a given designation⁶ who is practising as an arbitrator or mediator⁷.

1 As to self-employed barristers see PARA 1036.

2 This includes any arrangement which involves sharing the administration of a barrister's practice: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.1.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.1(a). As to the Code of Conduct see PARA 1150. As to the meaning of 'European lawyer' see PARA 535; and as to the meaning of 'registered European lawyer' see PARA 1102 note 7. This does not include a European lawyer registered with the Law Society, who may not practise from nor be a member of chambers: Annexe H (The Foreign Lawyers (Chambers) Rules) r 4.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.1(b). As to the meaning of 'foreign lawyer' see PARA 1154 note 3. Practice from the office of or in association with a foreign lawyer is permissible only subject to compliance with the Foreign Lawyers (Chambers) Rules (see PARA 1242) and with the consent of the Bar Council: para 403.1(b). As to the meaning of 'Bar Council' see PARA 1042 note 1.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.1(c). As to non-practising barristers see PARA 1035.

6 I.e. a lawyer from a jurisdiction other than England and Wales, a retired judge, or an employed barrister: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.1(d)(i)-(iii).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.1(d).

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1239. Insurance.

Every self-employed barrister¹ must be entered as a member with the Bar Mutual Indemnity Fund Ltd ('BMIF')². He must pay immediately when due the appropriate premium required by BMIF for the purpose of insurance against claims for professional negligence for such amount and upon such terms as may be approved by the Bar Council³ from time to time⁴, and must supply immediately upon being requested to do so such information as BMIF may from time to time require pursuant to its rules⁵.

1 As to self-employed barristers see PARA 1036. Note that the provisions as to insurance do not apply to pupil barristers, who are covered under their pupil supervisor's insurance: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 402.1, 404.2(e). As to the Code of Conduct see PARA 1150. As to pupil supervisors see PARAS 1082-1087.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 402.1. This requirement does not apply in respect of international work substantially performed outside England and Wales: Annexe A (The International Practice Rules) r 4(b). As to international work see PARA 1164.

3 As to the meaning of 'Bar Council' see PARA 1042 note 1.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 402.2(a). All practising barristers are required to have professional indemnity insurance up to a level of £2.5m, and professional indemnity insurance has been afforded to the whole of the practising Bar up to a maximum of £5m: see the Practice Management Guidelines Section 7: General Chambers' Administration (including premises and facilities) para 10.1 (published by the Bar Council). As to the meaning of 'practising barrister' see PARA 1152 note 2.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 402.2(b).

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1240. General administrative responsibilities.

A self-employed barrister¹ must take all reasonable steps to ensure that his practice (having regard to its nature) is efficiently and properly administered², that proper records are kept³, and that he complies with the authorised terms of work on which barristers offer their services to solicitors⁴ and with any Withdrawal of Credit Direction⁵ issued by the Chairman of the Bar⁶. A self-employed barrister must have ready access to library facilities which are adequate having regard to the nature of his practice⁷. He must have regard to any relevant guidance⁸, and must deal with all complaints⁹ made to him promptly, courteously and in a manner which addresses the issues raised¹⁰.

1 As to self-employed barristers see PARA 1036.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(a)(i). As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(a)(ii). A barrister is entitled for the purposes of his records (but not otherwise) to retain his brief or instructions or any papers delivered therewith or (if the solicitor requires the return of such brief or instructions and papers) to take and retain a copy of such brief or instructions and papers and of any written advice, provided that nothing entitles a barrister to exercise any lien over any brief, instructions or papers: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 7; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 8.

4 As to barristers' contractual terms of work see PARAS 1293-1295.

5 As to Withdrawal of Credit Directions see PARAS 1307-1308.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(a)(iii). Where a barrister is a member of a set of chambers, it is the responsibility of the head of chambers, or whichever member is responsible for the administration of chambers, to ensure that all barristers practising from the chambers comply with this requirement: see para 404.2(f); and PARA 1241. As to the Chairman of the Bar see PARA 1043. As to the meaning of 'Bar Council' see PARA 1042 note 1.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(b).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(c). Such guidance includes guidance as to the administration of chambers (see PARA 1241), pupillage and further training (see PARA 1080 et seq), and good equal opportunities practice in chambers in the form of the Equality and Diversity Code for the Bar: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(c)(i)-(iii). As to guidance generally see PARA 1150.

9 'Complaint' means an allegation by any person or by the Bar Council of its own motion of professional misconduct or of inadequate professional service and includes a legal aid complaint: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to what constitutes professional misconduct see PARA 1247. As to what constitutes inadequate professional services see PARA 1248. 'Legal aid complaints' are complaints relating to the conduct of barristers in connection with the provision for any person of services funded by the Legal Services Commission as part of the Community Legal Service or Criminal Defence Fund (as to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq): see the Administration of Justice Act 1985 s 40(1) (amended by the Legal Aid Act 1988 s 45(1), (3), Sch 5 para 17; and by the Access to Justice Act 1999 s 24, Sch 4 paras 32, 33); and the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the meaning of 'Legal Services Commission' see PARA 1161 note 18. As to legal aid complaints see further PARA 1253.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 403.2(d)(i). In particular, a self-employed barrister must have and comply with an appropriate written complaints procedure and make copies of the procedure available to a client on request: para 403.2(d)(ii). He must also respond promptly to Bar Council requirements relating to arrangements made in this regard and make provision for periodic inspections: see para 905(d); and PARA 1243. Where a barrister is a member of a set of chambers, it is the responsibility of the head of chambers, or whichever member is responsible for the administration of chambers, to ensure that all complaints against members of chambers are dealt with in this manner: see para 404.2(g)(iv). The Bar Standards Board has published guidance on the effective handling of complaints: see the Bar Standards Board Guidance 'Chambers complaints handling procedure'.

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1241. Administration of chambers.

Certain professional obligations apply to any self-employed barrister¹ who is head of a chambers² or who is responsible in whole or in part for the administration of chambers³. These obligations are to take all reasonable steps to ensure: (1) that the chambers is competently and efficiently administered and properly staffed⁴; (2) that chambers' affairs are conducted in a manner which is fair and equitable for all barristers and pupils⁵; (3) that proper arrangements are made for dealing with pupils and pupillage⁶; (4) that all barristers practising from the chambers have current practising certificates⁷, are properly insured⁸, and comply with the terms of work on which barristers offer their services to solicitors and with the Bar Council's Withdrawal of Credit Scheme⁹; (5) that proper arrangements are made in chambers for dealing with equality opportunity issues¹⁰; (6) that fee notes are issued expeditiously and pursued efficiently¹¹; and (7) that all registered European lawyers¹² and foreign lawyers¹³ in chambers comply with the Code of Conduct to the extent required¹⁴. In carrying out these obligations the persons concerned must have regard to any relevant guidance¹⁵.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'chambers' see PARA 1153 note 5.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.1(a), (b). If there is no one in either of these categories, the obligations apply to all members of chambers: para 404.1(c). As to the Code of Conduct see PARA 1150.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(a). In addition, the relevant persons must take all reasonable steps to ensure that all employees and staff of the chambers are competent to carry out their duties, carry out their duties in a correct and efficient manner, and are made clearly aware of such provisions of the Code of Conduct as may affect or be relevant to the performance of their duties: para 404.2(g)(i)-(iii). The relevant persons must also take all reasonable steps to ensure that all complaints against employees and staff are dealt with in the required manner (see PARA 1240): para 404.2(g)(iv).

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(b).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(c). As to the arrangements which must be made in chambers for dealing with pupils see PARA 1088.

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(j). As to the requirement for practising certificates see PARA 1155.

8 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(e). As to the requirements for insurance see PARA 1239. Note that pupils do not need to be insured: see para 402.1; and PARA 1239 note 1.

9 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988); and PARA 1294.

10 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(d). The arrangements are that chambers appoint at least one Equal Opportunities Officer; have a written equal opportunities policy made available to all members of chambers and staff and to the Bar Standards Board when required, which must set out the policy adopted in relation to each of the action areas in the Equality and Diversity Code for the Bar and must have regard to the recommendations in the Code; and that no barrister may take pupils until these steps have been complied with: para 404.2(d)(i)-(iii). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

11 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(i); and PARA 1299.

12 As to the meaning of 'European lawyer' see PARA 535; and as to the meaning of 'registered European lawyer' see PARA 1102 note 7. As to a registered European lawyer's right to practise in England and Wales see PARA 1166.

13 As to the meaning of 'foreign lawyer' see PARA 1154 note 3. As to foreign lawyers practising from chambers see further PARA 1242.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.2(h). As to the extent to which registered European and foreign lawyers are required to comply with the Code of Conduct see Annexe B (The Registered European Lawyers Rules) r 6; Annexe H (The Foreign Lawyers (Chambers) Rules) r 1(a), (b); and PARAS 1166-1167.

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.3. Such guidance includes guidance as to the administration of chambers, pupillage and further training, and good equal opportunities practice in chambers in the form of the Equality and Diversity Code for the Bar: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.3. As to guidance generally see PARA 1150.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(4) PROFESSIONAL PRACTICE AND CONDUCT/(vi) Administration of Practice/1242. Foreign lawyers practising from chambers.

1242. Foreign lawyers practising from chambers.

Before permitting a foreign lawyer¹ to practise from chambers², the head of chambers³ must: (1) obtain a written undertaking from the foreign lawyer to comply with the Code of Conduct of the Bar as if he were a self-employed barrister⁴ except in so far as any requirement of the Code of Conduct conflicts with the rules of his own profession⁵; (2) ensure that the foreign lawyer is covered by insurance against claims for professional negligence⁶; and (3) obtain the consent of the Bar Standards Board to the foreign lawyer so practising⁷. Thereafter for so long as the foreign lawyer is permitted to practise from chambers, the head of chambers has continuing obligations to satisfy himself that the foreign lawyer complies with his undertaking⁸, to ensure that the foreign lawyer remains covered by insurance⁹, and to inform the Bar Standards Board if he becomes aware of any failure by the foreign lawyer to comply with his undertaking¹⁰.

A self-employed barrister¹¹ must not permit a foreign lawyer to practise or continue to practise from chambers of which he is a member if the consent of the Bar Standards Board to the foreign lawyer so practising has not been given or is at any time withdrawn¹².

1 As to the meaning of 'foreign lawyer' see PARA 1154 note 3.

2 As to the meaning of 'chambers' see PARA 1153 note 5.

3 If there is no head of chambers these functions falls to every member of chambers: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) rr 1, 2. As to the Code of Conduct see PARA 1150.

4 As to self-employed barristers see PARA 1036.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) r 1(a).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) r 1(b). The insurance must be in such amount and upon such terms as are currently required by the Board: Annexe H (The Foreign Lawyers (Chambers) Rules) r 1(b). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) r 1(d). For this purpose, the head or the members of chambers (see note 3) must furnish the Board in writing with the name and details of the foreign lawyer, a copy of the lawyer's undertaking, and a copy of the current insurance policy or certificate of insurance covering the foreign lawyer: Annexe H (The Foreign Lawyers (Chambers) Rules) r 1(c).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) r 2(a).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) r 2(b). The head or the members of chambers (see note 3) must also ensure that the Board continues to hold a copy of the current insurance policy or certificate of insurance covering the foreign lawyer: Annexe H (The Foreign Lawyers (Chambers) Rules) r 2(b).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) r 2(c).

11 As to self-employed barristers see PARA 1036.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe H (The Foreign Lawyers (Chambers) Rules) r 3.

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(vii) Compliance

1243. Dealings with the Bar Standards Board.

A barrister who is practising as a barrister¹, or who the Bar Standards Board² has reason to believe may be practising as such, must respond promptly to any requirement from the Board for comments on or documents relating to the arrangements made for administering his practice and chambers³ or office whether or not any complaint⁴ has been received or raised arising out of those arrangements⁵. He must also permit the Board or any agent appointed by it to inspect forthwith and on request and at any time which is reasonable having regard to the circumstances and the urgency of the matter any premises from which he practises or is believed to practise as a barrister, the arrangements made for administering his practice and chambers or office, and any records relating to such practice and to the administration of his chambers or office⁶. These provisions do not affect the barrister's duty of confidentiality to his lay client⁷.

1 As to what constitutes practice as a barrister see PARA 1152 et seq.

2 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

3 As to the meaning of 'chambers' see PARA 1153 note 5.

4 As to the meaning of 'complaint' see PARA 1240 note 9.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(a)(i). As to the Code of Conduct see PARA 1150. As to the requirement to ensure that adequate complaints procedures are in place at a barrister's practice or chambers see para 403.2(d); and PARA 1240.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(a)(ii).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905 does not require a barrister to disclose or produce any document or information protected by law or in circumstances to which para 702 (duty to preserve client confidentiality: see PARA 1201) applies: para 905. As to the meaning of 'lay client' see PARA 1155 note 2.

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1244. Duty to inform the Bar Standards Board regarding disciplinary matters.

A barrister must report promptly to the Bar Standards Board¹ if:

- 1771 (1) he is charged with a serious criminal offence²;
- 1772 (2) he is convicted of any relevant criminal offence³;
- 1773 (3) he is convicted of a disciplinary offence by another professional body⁴;
- 1774 (4) bankruptcy proceedings are initiated in respect of or against him⁵;
- 1775 (5) directors disqualification proceedings are initiated against him⁶;
- 1776 (6) a bankruptcy order⁷ or directors disqualification order is made against him⁸;
- or
- 1777 (7) he enters into an individual voluntary arrangement⁹ with his creditors¹⁰.

These provisions do not affect the barrister's duty of confidentiality to his lay client¹¹.

1 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(b)(i). As to the Code of Conduct see PARA 1150. If a barrister is convicted of or charged with a serious criminal offence, his case may be referred to a Suspension Panel: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe N (Interim Suspension Rules) r 6. All barristers are subject to the Interim Suspension Rules: para 903(e).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(b)(ii). 'Relevant criminal offence' means any criminal offence committed in any part of the world except: (1) an offence committed in the United Kingdom which is a fixed penalty offence for the purposes of the Road Traffic Offenders Act 1988 or any statutory modification or replacement of it for the time being in force; (2) an offence committed in the United Kingdom or abroad which is dealt with by a procedure substantially similar to that applicable to such a fixed penalty offence; and (3) an offence whose main ingredient is the unlawful parking of a motor vehicle: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to fixed penalty offences see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) PARA 1093 et seq. As to the meaning of 'United Kingdom' see PARA 1063 note 13.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(b)(iii).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(c)(i).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(c)(ii). As to directors disqualification see **COMPANIES** vol 15 (2009) PARA 1575 et seq.

7 'Bankruptcy order' includes a bankruptcy order made pursuant to the Insolvency Act 1986 and any similar order made in any jurisdiction in the world: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the making of bankruptcy orders under the Insolvency Act 1986 see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 195 et seq.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(c)(iii).

9 As to individual voluntary arrangements see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) PARA 81 et seq.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(c)(iv).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905 does not require a barrister to disclose or produce any document or information protected by law or in circumstances to which para 702 (duty

to preserve client confidentiality: see PARA 1201) applies: para 905. As to the meaning of 'lay client' see PARA 1155 note 2.

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1245. Duty to respond to complaints and to comply with disciplinary measures.

Where a complaint¹ about a barrister has been made to or by the Bar Standards Board², or where the Board has reasonable grounds for believing that a breach of the Code of Conduct of the Bar³ may have occurred or is about to occur, or where a matter concerning criminal behaviour⁴ or individual insolvency⁵ has been reported to it, the barrister in question must respond promptly to any request from the Board for comments or information on the matter whether it relates to him or to another barrister⁶. A barrister is also required to respond promptly to any letter of notification sent to him or attend before any tribunal, panel, body or person when so required pursuant to the rules governing barristers' discipline and fitness to practise⁷, and to comply in due time with any sentence or suspension imposed or direction made or undertaking accepted by any such tribunal, panel, body or person⁸. These provisions do not affect the barrister's duty of confidentiality to his lay client⁹.

1 As to the meaning of 'complaint' see PARA 1240 note 9.

2 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

3 I.e. the Code of Conduct of the Bar of England and Wales (8th Edn, 2004): see PARA 1150.

4 I.e. any of the matters set out in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(b) (see PARA 1244).

5 I.e. any of the matters set out in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(c) (see PARA 1244).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(d).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(e). The rules governing barristers' discipline and fitness to practise for these purposes are: the Complaints Rules (see Annexe J), the Disciplinary Tribunals Regulations (Annexe K), the Summary Procedure Rules (Annexe L), the Hearings before the Visitors Rules (Annexe M), the Interim Suspension Rules (Annexe N), the Fitness to Practise Rules (Annexe O), and the Adjudication Panel and Appeals Rules (Annexe P): paras 903, 904(e). As to barristers' discipline see further PARAS 1247-1292; and as to fitness to practise see PARA 1156.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905(f).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 905 does not require a barrister to disclose or produce any document or information protected by law or in circumstances to which para 702 (duty to preserve client confidentiality: see PARA 1201) applies: para 905. As to the meaning of 'lay client' see PARA 1155 note 2.

UPDATE

1245 Duty to respond to complaints and to comply with disciplinary measures

NOTE 7--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J, K substituted on 1 March 2009, Annexe P amended on 1 June 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(i) Professional Misconduct and Inadequate Professional Service/1246. Infringement of the Code of Conduct.

(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE

(i) Professional Misconduct and Inadequate Professional Service

1246. Infringement of the Code of Conduct.

Any failure by a barrister to comply with certain provisions¹ of the Code of Conduct or with the training requirements imposed by the Consolidated Regulations² in force at the date of his call to the bar³, or with the Continuing Professional Development Regulations⁴ or the Practising Certificate Regulations⁵ will render him liable to a written warning from the Bar Standards Board⁶ or the imposition of a financial penalty or both⁷. In the event of such a warning or penalty, a barrister has a right of appeal⁸.

1 The Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(a) to (d), 203(1)(a), 204(b), 402, 403(b), (c) and (d), 404, 405, 406, 701, 709, 801(a), 804 or 905(a)(i), (d) or (e): para 901.1. Any serious failure to comply with these provisions constitutes professional misconduct: see para 901.5; and PARA 1247. Non-compliance under para 202 may constitute professional misconduct if appropriate action is not taken: see para 901.4; and PARA 1247. Failure to comply with any other provision of the Code constitutes professional misconduct: see para 901.7; and PARA 1247.

2 For requirements relating to admission, education, examination and call to the Bar see PARA 1063 et seq; and for requirements relating to pupillage see PARAS 1080-1097. As to the Consolidated Regulations see PARA 1150.

3 As to the call to the bar see PARAS 1075-1078.

4 As to the continuing professional development see PARA 1154.

5 As to the practising certificates see PARA 1155.

6 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1. Liability under para 901.1 is strict. The financial penalty is either £100 (or such other sum as may be prescribed by the Bar Council from time to time) or as prescribed by the relevant regulations: para 901.1. Failure to pay a financial penalty within the prescribed time constitutes professional misconduct: see para 901.2; and PARA 1247.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.3. The appeal lies to an appeal panel (under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunal Rules) r 23(3), (4)). The time for bringing such an appeal is 28 days from the date upon which the written warning or notice seeking payment of the penalty is deemed to have been received by the Barrister. However, unless the Bar Standards Board agrees or the appeal panel otherwise rules, an appeal will not operate as a suspension of the requirement to pay the financial penalty or an extension of the time for so doing: para 901.3.

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1247. Professional misconduct.

Under the Code of Conduct of the Bar, it is professional misconduct if a barrister:

- 1778 (1) fails to pay a financial penalty for non-compliance within the required time¹;
- 1779 (2) fails to comply with the preconditions for practice as a barrister² and fails to take the necessary action to cure any relevant non-compliance³;
- 1780 (3) infringes the Code of Conduct within two years after having been given the latest of two or more separate written warnings or automatic financial penalties for non-compliance⁴ by the Bar Standards Board⁵;
- 1781 (4) fails (or where relevant seriously fails⁶) to comply with the Code of Conduct⁷;
- 1782 (5) makes a false declaration on call to the Bar⁸;
- 1783 (6) engaged before call in conduct which is dishonest or otherwise discreditable to a barrister and which was not, before call, fairly disclosed in writing to the benchers of the Inn calling him⁹; or
- 1784 (7) breaches in any material respect any undertaking given on call to the Bar¹⁰.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 901.2, 1001. As to non-compliance see PARA 1246. As to the Code of Conduct see PARA 1150.

2 Ie the conditions set out in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202 (see PARA 1153): para 901.4.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 901.4, 1001. As to non-compliance see PARA 1246.

4 Ie infringement of the provisions listed in the Code of Conduct para 901.1 (see PARA 1246): para 901.6.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 901.6, 1001. The two written warnings or penalties must both have been issued within a period of three years: para 901.6. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 Ie where the failure relates to one of the provisions listed in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246): para 901.5(1). A failure to comply may be a serious failure due to the nature or extent of the failure, because the failure in question is combined with a failure to comply with any provision of the Code, or if the barrister has previously failed to comply with the same or any other provision of the Code: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.5(2).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 901.5, 901.7, 1001.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 902, 1001. As to the standard call declaration see PARA 1077. As to solicitors' applications see further PARA 1099; as to other common law practitioners see further PARA 1101; as to European lawyers see further PARAS 1105, 1107; and as to academics see further PARA 1108.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 902, 1001. As to the requirements for admission see further PARA 1063.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 902, 1001. As to these undertakings see PARA 1077.

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1248. Inadequate professional service.

'Inadequate professional service' means conduct towards a lay client¹ or performance of professional services for that client which falls significantly short of that which is to be reasonably expected of a barrister in all the circumstances². Pursuant to the rules governing barristers' discipline and fitness to practise³, a barrister may be directed to provide redress to a lay client for inadequate professional service whether or not such inadequate professional service also constitutes professional misconduct⁴.

1 As to the meaning of 'lay client' see PARA 1155 note 2.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001. As to the Code of Conduct see PARA 1150.

3 See the Complaints Rules (see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J), the Disciplinary Tribunals Regulations (see Annexe K), the Summary Procedure Rules (see Annexe L), the Hearings before the Visitors Rules (see Annexe M), the Interim Suspension Rules (see Annexe N), the Fitness to Practise Rules (see Annexe O), and the Adjudication Panel and Appeals Rules (see Annexe P): para 903. As to barristers' discipline see further PARA 1246 et seq; and as to fitness to practise see PARA 1156.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 904. As to what constitutes professional misconduct see PARA 1247.

UPDATE

1248 Inadequate professional service

NOTE 3--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J, K substituted on 1 March 2009, Annexe P amended on 1 June 2009.

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(ii) Jurisdiction over Disciplinary Matters

A. THE COURTS

1249. Court's inherent powers to prevent abuse and punishment for contempt.

For at least the last 300 years the courts have left all matters of professional discipline and conduct to the Inns of Court¹, the Inns in conjunction with the Bar Council² and latterly to the Bar Standards Board³. The judges retain the power, however, to punish a barrister for contempt of court, and, as part of their inherent powers to prevent abuse of the court's procedure, to refuse to hear an advocate for reasons which apply to him as an individual⁴, or to restrain an advocate from representing a party in the event that his continued participation in a trial might lead to a situation where an order made at trial would have to be set aside on appeal⁵.

The courts have power to punish a barrister for contempt of court in respect of acts done in a professional⁶ as well as a private⁷ capacity⁸. Thus a barrister may be punished for contempt in respect of language used when appearing as an advocate⁹. Expressions which, if uttered in the honest discharge of counsel's duty, would be privileged, are, when uttered with the intention to insult the jury or the court, an abuse of privilege and may be punished as a contempt by the judge¹⁰. Not every act of discourtesy to the court by a barrister, however, amounts to contempt; and the summary power of punishing for contempt should be used sparingly and only in the most serious cases¹¹.

The ordinary punishments for contempt are imprisonment or a fine¹².

1 See *Re S (a barrister)* [1970] 1 QB 160, [1969] 1 All ER 949. The judges act as Visitors to the Inns, however, for the purpose of determining appeals from decisions of disciplinary tribunals: see PARAS 1284-1291. As to the disciplinary authority of the benchers see PARA 1051. As to the establishment of the Inns of Court see PARA 1039; and as to the Inns of Court today see PARAS 1050-1057.

2 See *R v McFadden* (1975) 62 Cr App Rep 187. As to the meaning of 'Bar Council' see PARA 1042 note 1. See also *Lincoln v Daniels* [1962] 1 QB 237, [1961] 3 All ER 740, CA.

3 See PARA 1049.

4 See PARA 497.

5 See *Geveran Trading Co Ltd v Skjevesland* [2002] EWCA Civ 1567, [2003] 1 All ER 1.

6 *Lechmere Charlton's Case* (1837) 2 My & Cr 316; *Watt v Ligertwood* (1874) LR 2 Sc & Div 361; *Re Pollard* (1868) LR 2 PC 106; *Re Pater, ex p Pater, R v Middlesex Justices* (1864) 5 B & S 299; *Rainy v Sierra Leone Justices* (1853) 8 Moo PCC 47; *Linwood v Andrews and Moore* (1888) 58 LT 612.

7 For examples of contempts committed by barristers acting other than as counsel see *Redding's Case* (1680) T Raym 376n; *Anon* (1741) 2 Atk 173; *Re Wallace* (1866) LR 1 PC 283; *R v Castro, Skipworth's Case* (1873) LR 9 QB 230, DC.

8 See further **CONTEMPT OF COURT** vol 9(1) (Reissue) PARAS 407, 450. There are old instances of barristers being punished or rebuked for prolix, frivolous and scandalous pleadings (see eg *Hill's Case* (1603) Cary 27; *Emmerson v Dallison* (1660) 1 Rep Ch 194; *Everet v Williams* (1725) noted in Lindley and Banks on Partnership (18th Edn, 2002) p 125; Mitford on Pleading (2nd Edn, 1814) p 48; and see *Hickman v Clarke* (1615) 2 Fowler's Exchequer Practice 407; *Dundass v Lord Weymouth* (1777) 2 Cowp 665; *Yates v Carlisle* (1761) 1 Wm Bl 270 at

271), but under modern practice the sanction for such pleadings is to have them struck out (see further **CONTEMPT OF COURT** vol 9(1) (Reissue) PARA 445).

9 See *Fuller's Case* (1607) 12 Co Rep 41 at 43; *Re Pollard* (1868) LR 2 PC 106; *Re Pater, ex p Pater, R v Middlesex Justices* (1864) 5 B & S 299.

10 *Re Pater, ex p Pater, R v Middlesex Justices* (1864) 5 B & S 299.

11 *Izuora v R* [1953] AC 327, [1953] 1 All ER 827, PC.

12 *Re Wallace* (1866) LR 1 PC 283. Although the court has the power to suspend a barrister, it is no longer used.

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B. REGULATION BY PROFESSIONAL BODIES

1250. Disciplinary tribunals appointed by the Inns' Council.

Disciplinary authority over barristers has historically been exercised by each of the Inns of Court in accordance with their powers to admit and expel persons from membership of the Inn and to confer (by call to the Bar) and remove (by disbarment) the degree of barrister¹. In 1967, however, all the disciplinary powers of the Inns over barristers in respect of professional misconduct (other than the powers to pronounce and carry into effect any sentence in respect of misconduct) were vested in the Senate of the Four Inns of the Court. In 1974 these powers were transferred to the Senate of the Inns of Court and the Bar². In 1987, the latter body was replaced by the Bar Council and the Council of the Inns of Court³; and on and from 1 January 1987, the judges, with the concurrence of the Inns, resolved and confirmed that disciplinary powers over barristers should be exercised in accordance with the provisions of the Inns' Council Constitution⁴. Under these provisions, the Inns' Council appoints disciplinary tribunals, which conduct their proceedings in accordance with, and have the powers and functions specified in, the Disciplinary Tribunals Regulations⁵.

Complaints against barristers are investigated and considered by the Complaints Commissioner and by the Complaints Committee of the Bar Standards Board⁶. Less serious cases of professional misconduct and cases of inadequate professional service are dealt with by the Committee or by a hearing panel appointed by the Committee⁷. In more serious cases, charges of professional misconduct are preferred by the Committee before a disciplinary tribunal⁸.

A barrister found guilty of professional misconduct by a summary hearing panel or disciplinary tribunal has a right of appeal against the finding or sentence to a tribunal of judges sitting as Visitors to the Inns⁹.

1 These powers are recognised by the Courts and Legal Services Act 1990 s 31(3) (as prospectively repealed): see **COURTS** vol 10 (Reissue) PARA 331. As to the establishment of the Inns of Court see PARA 1039; and as to the Inns of Court today see PARAS 1050-1057. As to the degree of barrister see PARA 1033.

2 See PARA 1040.

3 See PARA 1041. As to the constitution and functions of the Bar Council see PARAS 1042-1048; and as to the constitution and functions of the Inns' Council see PARAS 1053-1057.

4 See the Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 14(a). As to the Introduction and Constitutions see PARA 1042 note 8.

5 See the Introduction and Constitutions (2008) Pt III (Constitution of the Council of the Inns of Court) para 14(b). The Disciplinary Tribunals Regulations are annexed to the Code of Conduct: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations); and PARA 1270 et seq. All barristers are subject to the Disciplinary Tribunals Regulations: para 903(b).

6 As to the Complaints Commissioner and the membership and powers of the Complaints Committee see PARA 1251. As to the consideration and investigation of complaints see PARAS 1254-1258.

7 See PARA 1259 et seq.

8 See PARA 1269 et seq.

9 See PARA 1282 et seq.

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1251. The Complaints Commissioner and the Complaints Committee.

The Complaints Commissioner is the Bar Standards Board's lay commissioner for complaints¹. Appointed by the Board², the Commissioner:

- 1785 (1) receives, considers and directs the investigation of complaints of professional misconduct or inadequate professional services on the part of barristers³;
- 1786 (2) deals with such complaints either by referring them with his comments to the Complaints Committee or by dismissing them⁴;
- 1787 (3) is entitled to attend meetings of the Complaints Committee⁵;
- 1788 (4) acts as chairman of Adjudication Panels appointed by the Complaints Committee⁶;
- 1789 (5) in all other respects supervises the working of the Bar Standards Board's procedures for dealing with complaints of professional misconduct and inadequate professional services⁷; and
- 1790 (6) must submit an annual report and such other reports as may be appropriate to the Bar Standards Board⁸.

The membership of the Complaints Committee⁹ is as prescribed by the standing orders of the Bar Standards Board as amended from time to time¹⁰. The Committee's powers are:

- 1791 (a) to determine whether any complaint¹¹ discloses a prima facie case of professional misconduct, and if so to deal with it in accordance with the Complaints Rules¹²;
- 1792 (b) to determine whether the complaint discloses a prima facie case of inadequate professional service by the barrister concerned, and if so to deal with it in accordance with the Complaints Rules¹³;
- 1793 (c) to prefer charges of professional misconduct before disciplinary tribunals¹⁴, to refer to such tribunals any legal aid complaint¹⁵ relating to the conduct of a barrister, and to be responsible for prosecuting any such charges or legal aid complaints before such tribunals¹⁶;
- 1794 (d) to prefer and deal summarily with charges of professional misconduct¹⁷;
- 1795 (e) to act upon any recommendations of the Complaints Commissioner¹⁸;
- 1796 (f) to raise complaints on behalf of the Bar Standards Board and to direct the investigation of complaints raised by the Board of its own motion¹⁹;
- 1797 (g) to take such other actions in relation to complaints or infringements of the Code of Conduct as are permitted by the Complaints Rules²⁰;
- 1798 (h) to make recommendations on matters of professional conduct²¹;
- 1799 (i) to make rulings on matters of professional conduct when the Committee considers it appropriate to do so²²;
- 1800 (j) to exercise the power of the Bar Standards Board to grant waivers of the provisions of that Code of Conduct generally or in particular cases²³;
- 1801 (k) to exercise the power of the Bar Standards Board to designate Legal Advice Centres²⁴.

The Committee's decisions are susceptible to judicial review²⁵.

1 Standing Orders of the Bar Council (2005) para 1. As to the Bar Standards Board see PARA 1049. As to the Standing Orders see PARA 1044 note 18.

2 The Complaints Commissioner is appointed for such period and on such terms as to remuneration as the Board thinks fit; no one who is or has been a barrister, solicitor or judge can be so appointed: Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17A(a). As to the Introduction and Constitutions see PARA 1042 note 8.

3 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17A(b)(i). As to what constitutes professional misconduct see PARA 1247; and as to what constitutes inadequate professional service see PARA 1248.

4 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17A(b)(ii). As to the meaning of 'complaint' see PARA 1240 note 9.

5 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17A(b)(iii).

6 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17A(b)(iv). As to adjudication panels see PARA 1262 et seq.

7 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17A(b)(v). As to the complaints procedure see PARA 1254 et seq.

8 Introduction and Constitutions (2008) Pt II (Constitution of the General Council of the Bar) para 17A(b)(vi).

9 As to the organisation of the Bar Standards Board and the place of the Complaints Committee within it see PARA 1049.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 2. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). As to the Code of Conduct see PARA 1150.

11 As to the investigation of complaints see PARA 1254; and for the powers of the Committee in relation to such complaints see PARA 1256.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(a). All barristers are subject to the Complaints Rules: para 903(a).

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(b).

14 See further the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations); and PARAS 1270-1280.

15 As to the meaning of 'legal aid complaint' see PARA 1240 note 9.

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(c).

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(d). Such charges are dealt with in accordance with Annexe L (The Summary Procedure Rules): see PARAS 1266-1268.

18 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(e). As to the Complaints Commissioner's recommendations see PARA 1254.

19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(f). As to the Bar Standards Board's power to raise a complaint of its own motion see PARA 1254 note 2.

20 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(g). The Committee can, in particular take action in relation to r 35 (see PARA 1256 note 2): para 33(g)

21 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(h).

22 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(i).

23 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(j).
For the power to grant waivers see para 108; and PARA 1150 note 8.

24 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 33(k). As to the meaning of 'legal advice centre' see PARA 1161 note 20; definition applied by Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 70(b).

25 See *R v General Council of the Bar, ex p Percival* [1990] 3 All ER 137.

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C. STATUTORY POWERS

1252. The Legal Services Ombudsman and the Office of Legal Complaints.

Until a day to be appointed, the Legal Services Ombudsman has responsibility for investigating allegations concerning the manner in which complaints made to any body having disciplinary powers in relation to barristers has been dealt with¹. The office was created by the Courts and Legal Services Act 1990². The Ombudsman has wide-ranging powers to order the reconsideration of complaints and the payment of compensation to complainants³, and to make recommendations as to the functioning of disciplinary bodies⁴.

As from a day to be appointed these functions will vest in the Office of Legal Complaints, which is constituted under the Legal Services Act 2007⁵.

1 See the Courts and Legal Services Act 1990 s 22(1) (as prospectively repealed); and PARA 425. As to the bodies having disciplinary powers in relation to barristers see PARAS 1254-1292. The Ombudsman may not investigate an issue which is being or has been determined by a disciplinary tribunal: see s 22(7) (as prospectively repealed); and PARA 426.

2 See the Courts and Legal Services Act 1990 s 21 (as prospectively repealed); and PARA 424.

3 See the Courts and Legal Services Act 1990 s 23 (as prospectively repealed); and PARA 431.

4 See the Courts and Legal Services Act 1990 s 24 (as prospectively repealed); and PARA 433.

5 See the Legal Services Act 2007 s 114, Sch 15 (Sch 15 not yet in fully force); and PARA 442 et seq.

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1253. Legal aid complaints.

By statutory provision, the disciplinary provisions applicable to barristers apply to legal aid complaints¹ relating to the conduct of barristers as they apply to other complaints about their conduct². Any disciplinary tribunal³ which hears a legal aid complaint relating to the conduct of a barrister may⁴, if it thinks fit and whether or not it makes any other order, order that any fees otherwise payable by the Legal Services Commission in connection with services provided by him as part of the Community Legal Service or Criminal Defence Service be reduced or cancelled⁵.

Where a disciplinary tribunal hears a charge of professional misconduct⁶ or breach of professional standards against a barrister, it may order that he be excluded from providing representation funded by the Legal Services Commission as part of the Criminal Defence Service, either temporarily or for a specified period, if it determines that there is good reason for the exclusion arising either out of his conduct in connection with any such services or his professional conduct generally⁷.

An appeal lies in the same manner as an appeal would lie in the case of any other order of such a tribunal⁸.

1 As to the meanings of 'complaint' and 'legal aid complaint' see PARA 1240 note 9.

2 Administration of Justice Act 1985 s 41(1) (ss 41, 42 substituted by the Legal Aid Act 1988 s 33).

3 The reference to a disciplinary tribunal is a reference to a tribunal acting under the disciplinary provisions applicable to barristers, and it includes a reference to a member exercising any functions of the tribunal delegated to him: Administration of Justice Act 1985 ss 41(5), 42(4)(a) (both as substituted: see note 2). As to disciplinary tribunals see PARAS 1269-1280.

4 He subject to any exclusion or restriction made by the disciplinary provisions applicable to barristers: Administration of Justice Act 1985 s 41(5) (as substituted: see note 2).

5 Administration of Justice Act 1985 s 41(2) (s 41 as substituted (see note 2); and s 41(2) amended by the Access to Justice Act 1999 s 24, Sch 4 paras 32, 34). As to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq. As from a day to be appointed this provision will have effect despite the Legal Services Act 2007 s 157 (approved regulators not to make provision for redress) (see PARA 386): Administration of Justice Act 1985 s 41(2) (prospectively amended by the Legal Services Act 2007 s 208(1), Sch 21, paras 65, 66).

6 As to what constitutes professional misconduct see PARA 1247.

7 Administration of Justice Act 1985 s 42(1) (s 42 as substituted (see note 2); and s 42(1), (3) amended by the Access to Justice Act 1999 Sch 4 paras 32, 35). The disciplinary provisions applicable to barristers must include provision enabling a barrister who has been so excluded from providing representation funded by the Legal Services Commission as part of the Criminal Defence Service to apply for an order terminating his exclusion from such work: Administration of Justice Act 1985 s 42(3) (as so substituted and amended).

8 Administration of Justice Act 1985 ss 41(4), 42(2) (both as substituted: see note 2).

UPDATE

1253 Legal aid complaints

NOTE 5--Day appointed is 1 January 2010: SI 2009/3250.

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(iii) Disciplinary Procedures

A. CONSIDERATION AND INVESTIGATION OF COMPLAINTS

1254. Consideration of complaints by the Complaints Commissioner.

Any complaint against a barrister¹, other than a complaint raised by the Bar Standards Board of its own motion², must be referred to and considered by the Complaints Commissioner³, who determines whether in his view the complaint discloses a prima facie case of professional misconduct⁴ or inadequate professional service⁵ and is apt for consideration by the Complaints Committee⁶. The Commissioner may at this stage refer the complaint elsewhere, where such referral would be appropriate⁷. If he makes no such referral the Commissioner must consider whether the complaint:

- 1802 (1) is frivolous or vexatious, or for any other reason lacks substance⁸;
- 1803 (2) has been made more than six months after the act or omission complained of and the complaint is not of sufficient seriousness to justify nor are there any exceptional circumstances which justify further consideration of the complaint despite the lapse of time since the matters complained of⁹;
- 1804 (3) cannot be properly or fairly investigated, or the barrister is for any reason unable fairly to respond to it¹⁰;
- 1805 (4) reveals a prima facie case of an infringement of a provision of the Code of Conduct¹¹, but that infringement would not amount to professional misconduct or inadequate professional service¹²;
- 1806 (5) is insufficiently serious, in itself or its consequences, to justify further action¹³; or
- 1807 (6) is for any other reason whatsoever not apt for consideration by the Committee¹⁴.

In order to reach his determination, the Commissioner may seek information or assistance, orally or in writing, as he thinks fit, from any other person whom he considers may be capable of affording it¹⁵.

If the Commissioner considers that the complaint fails to disclose a prima facie case of professional misconduct or inadequate professional service or that it is otherwise inapt for consideration by the Committee¹⁶, he must dismiss it¹⁷.

If the complaint is not so dismissed, it must be referred to the Secretary of the Complaints Committee for investigation¹⁸. Following the completion of any such investigation, the Commissioner must reconsider the complaint¹⁹, and decide whether, with the information now available to him it discloses a prima facie case of professional misconduct or inadequate professional service, and is apt for consideration by the Complaints Committee²⁰.

1 For these purposes 'barrister' includes a person who is serving a sentence of disbarment which is subsequently overturned on appeal: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 1. As to disbarment see PARA 1279.

2 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). The Bar Standards Board has the power to raise complaints about the conduct of or services provided by barristers, and such complaints are dealt with by the Secretary of the Complaints Committee (see PARA 1255): Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 5. Complaints made by the Board of a breach of the Code of Conduct paras 901.2, 901.4, 901.5, 901.6 or 905(b)(c) or (f) may be made the subject of a separate charge of professional misconduct without the requirement of any further investigation by the Secretary. However, the decision to prefer charges in respect of any such breach and as to the level of disposal must be taken by the Complaints Committee: Annexe J (The Complaints Rules) r 32(a).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 6. The Commissioner may delegate his functions: see Annexe J (The Complaints Rules) r 3. As to the Commissioner see PARA 1251.

4 As to what constitutes professional misconduct see PARA 1247; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 70(b).

5 As to what constitutes inadequate professional service see PARA 1248; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 70(b).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 6, 8.

If at any time in the course of his consideration of the complaint, it appears to the Commissioner that the complaint might be capable of resolution by agreement, and that it would be appropriate to resolve it in that manner, he may invite the complainant and the barrister concerned to attempt to conciliate their differences: Annexe J (The Complaints Rules) r 16. The Commissioner may at any time adjourn consideration of a complaint for such period as he thinks fit, whether while the complainant and the barrister attempt conciliation, during the currency of related legal proceedings or for any other reason: Annexe J (The Complaints Rules) r 17.

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 9, 10.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 11(a), (b).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 11(c).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 11(d).

11 Is an infringement of one of the provisions listed in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246): Annexe J (The Complaints Rules) r 11(e).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 11(e). In such a case the Commissioner must refer the complaint to a barrister member of the Committee of no fewer than two years service who will decide whether and in what manner the complaint should be pursued: see Annexe J (The Complaints Rules) rr 13, 14.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 11(f).

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 11(g).

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 12. The Commissioner may seek assistance from, for example, the complainant, the barrister, any potential witness, any member of the Committee, the Secretary, or the Equal Opportunities Officers of the Bar Standards Board: Annexe J (The Complaints Rules) r 12.

16 With the exception of complaints which show a prima facie case of infringement but not professional misconduct: see text and notes 11, 12.

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 15. The Commissioner must notify the complainant of his decision and of his reasons for the dismissal: Annexe J (The Complaints Rules) r 15. In addition, he may recommend to the Complaints Committee that a written warning be given to the barrister concerned, that the barrister should be directed to write an apology to the complainant, or that the barrister should be advised as to his future conduct, and the Committee will have the power to act upon such recommendation if it considers it appropriate, even if the conduct of the barrister did not infringe the Code of Conduct. If such a recommendation is made, the Commissioner may not dismiss the

complaint until after the Committee has decided whether or not to act on his recommendation, and the Commissioner must notify the complainant of any action which is to be taken against the barrister at the same time as he notifies him of the dismissal of the complaint: Annexe J (The Complaints Rules) r 15.

18 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 18(a). As to the Secretary of the Committee's powers to investigate complaints see PARA 1255.

19 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 18(b).

20 Commissioner for reconsideration the powers the Commissioner exercises are substantially the same as those he exercised during the initial consideration: see Annexe J (The Complaints Rules) rr 19-23.

UPDATE

1254-1258 Consideration and investigation of complaints

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

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1255. Investigation of complaints by the Secretary of the Committee.

The Secretary of the Complaints Committee must investigate complaints referred to him by the Complaints Commissioner¹ or raised by the Bar Standards Board under its own motion².

The complaint must be sent to the barrister concerned together with a letter³ requiring him to comment in writing and to make any written representations he sees fit as to his conduct or the services he has provided to the complainant⁴. The complaint should normally also be sent to any solicitor⁵ or solicitor's agent named on the form of complaint as having instructed the barrister, or, if the Commissioner or Committee so directs, any other person whose name and address is provided by the complainant as a person able to assist⁶. Any comments received consequently should normally be sent to the complainant⁷, and, if the complainant responds in turn (and the complaint is referred to the Committee at the conclusion of the investigation) then a copy of that response must be sent to the barrister concerned⁸.

The Secretary may enter into further correspondence with any of the parties whose comments have been sought, or any other party who the Secretary, the Commissioner or the Committee think capable of affording further assistance⁹.

At the conclusion of the investigation the complaint must then be either returned to the Commissioner, or in the event of it having been raised by the Bar Standards Board of its own motion to the Complaints Committee, together with the results of the investigation¹⁰.

1 Ie under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 18(a) (see PARA 1254). Such an investigation is carried out under the direction of the Complaints Commissioner and in such manner as he thinks fit: Annexe J (The Complaints Rules) r 25(a). As to the Commissioner see PARA 1251. As to the Code of Conduct see PARA 1150.

2 Ie under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 5 (see PARA 1254 note 2). Such an investigation is carried out under the direction of the Complaints Committee and in such manner as it thinks fit: Annexe J (The Complaints Rules) r 25(b). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). As to the Complaints Committee see PARA 1251.

3 The letter should be sent to the address notified by the barrister under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(d) (see PARA 1153): Annexe J (The Complaints Rules) r 26.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 26. If no response is received within 28 days of the date of posting of such a letter, the Secretary may proceed as if the barrister's response had been to deny the allegations made in the complaint in their entirety. Any relevant documents, information or comments obtained at that time by the Commissioner from the complainant and/or from any potential witness must be made available to the barrister on request: Annexe J (The Complaints Rules) r 26.

5 As to the meaning of 'solicitor' see PARA 1063 note 14.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 27.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 28. The Commissioner or the Committee may in the exercise of his or its discretion direct that this step be omitted or that some of the comments not be sent to the complainant if, for example, issues of privilege or confidentiality make it inappropriate: Annexe J (The Complaints Rules) r 28.

- 8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 29.
- 9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 30.
- 10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 18(b), 31. As to the Complaints Commissioner's considerations see PARA 1254. As to the powers and functions of the Committee in respect of a complaint which has been referred to it see PARA 1256.

UPDATE

1254-1258 Consideration and investigation of complaints

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/A. CONSIDERATION AND INVESTIGATION OF COMPLAINTS/1256. Consideration of complaints by the Complaints Committee.

1256. Consideration of complaints by the Complaints Committee.

Where the Complaints Commissioner or the Bar Standards Board refers a complaint to the Complaints Committee¹, the Committee must consider the complaint (and the results of investigations of it) so referred, together with the Commissioner's comments on it². Depending on its conclusions as to its gravity, the Committee may then deal with the complaint in any of the following ways:

- 1808 (1) if the complaint does not disclose a prima facie case of professional misconduct, but the barrister's conduct is nevertheless such as to give cause for concern, draw it to his attention in writing. The Committee may in those circumstances, either before or after the dismissal of the complaint³ do any or all of the following⁴:
- 31
- 18. (a) direct the barrister to apologise in writing to the complainant⁵;
 - 19. (b) advise him as to his future conduct either in writing or by directing him to attend on the Chairman of the Committee or on some other person nominated by the Committee, to receive such advice⁶;
 - 20. (c) upon the satisfaction of the relevant conditions, refer the complaint to an adjudication panel⁷;
 - 21. (d) In a case where there has been an infringement of the Code of Conduct⁸, direct the Secretary of the Complaints Committee to administer a formal written warning or a financial penalty for the infringement, or both⁹;
- 32
- 1809 (2) if a prima facie case of inadequate professional service¹⁰ is disclosed then, subject to the satisfaction of certain conditions¹¹, the Committee may direct that the complaint be referred to an adjudication panel¹²;
- 1810 (3) if a prima facie case of professional misconduct¹³, whether with or without inadequate professional service, is disclosed but in the opinion of the Committee the matter is insufficiently serious to warrant dealing with under the Summary Procedure Rules or reference to a disciplinary tribunal, the Committee may direct that the complaint be dealt with by informal attendance by the barrister to explain his conduct¹⁴;
- 1811 (4) if a prima facie case of professional misconduct, whether with or without inadequate professional service, is disclosed, the Committee may direct that the complaint should form the subject matter of a charge before a disciplinary tribunal¹⁵, unless it is of the opinion that there are no disputes of fact which cannot fairly be resolved by a summary procedure, in which case, provided the Committee is satisfied that the powers of a summary procedure are adequate to deal with the gravity of the issues, it may deal with the matter summarily¹⁶.

If, however, the subject matter of the complaint involves a conviction for an offence of dishonesty or deception or some other arrestable offence¹⁷ the Committee must direct that the complaint should form the subject matter of a charge before a disciplinary tribunal¹⁸. In all other cases where a prima facie case of professional misconduct is disclosed, in determining the

appropriate means of disposal the Committee is entitled to take into consideration any matters which it considers relevant¹⁹.

Subject to this, the Committee may at any time dismiss the complaint²⁰, determine that no further action be taken on the complaint²¹, or postpone consideration of the complaint²².

1 As to the Complaints Commissioner's power to refer a complaint see PARA 1254; and as to the Bar Standards Board's power to raise a complaint of its own motion see PARA 1254 note 2. As to the Commissioner and the Committee generally see PARA 1251. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 34. Except in the case of complaints made under the Annexe J (The Complaints Rules) r 32 (see PARA 1254), the Committee must not make any finding that there is a prima facie case of professional misconduct or inadequate professional service by a barrister on the basis of any allegation by a complainant to which the barrister has not had a reasonable opportunity to respond: Annexe J (The Complaints Rules) r 34.

If in the course of its consideration of a complaint the Committee considers that there is any matter other than that complained of which might give rise to a prima facie case of professional misconduct or, where the original complaint is made by or on behalf of the lay client, a prima facie case of inadequate professional service, the Committee may raise a complaint about that matter on behalf of the Bar Standards Board: see Annexe J (The Complaints Rules) r 35.

3 If the complaint of professional misconduct was not dismissed before any such direction or advice referred to in heads (a)-(d) in the text was made or given, the Committee may thereafter dismiss that complaint. If the Committee considers that the circumstances of the complaint are relevant to the barrister's position as a pupil supervisor, it may notify the barrister's Inn of its concern in such manner as it sees fit: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(d).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(d). If the complaint is so dismissed the Secretary of the Complaints Committee must notify the complainant and the barrister complained against of the manner of disposal of the complaint and the reasons for such disposal: Annexe J (The Complaints Rules) r 39.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(d) (i).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(d) (ii).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(d) (iii). As to the conditions which must be satisfied see note 11. A complaint that is referred to an adjudication panel is then dealt with in accordance with Annexe P (The Adjudication Panel and Appeals Rules); and PARAS 1262-1265.

8 Is an infringement of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246): Annexe J (The Complaints Rules) r 36(d)(iv).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(d) (iv).

10 As to what constitutes inadequate professional service see PARA 1248; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 70(b). Special provision is made for circumstances where a complaint discloses a prima facie case of inadequate professional service against a registered European lawyer: see Annexe J (The Complaints Rules) r 40. As to the meaning of 'registered European lawyer' see PARA 1102 note 7; definition applied by Annexe J (The Complaints Rules) r 70(b).

11 The complainant must be the barrister's lay client or his duly authorised representative (or, in the case of an employed barrister, the person to whom he has supplied the professional service in question); and if a prima facie case of professional misconduct is also disclosed by the complaint, the matter must in the opinion of the Committee be insufficiently serious to warrant dealing with under the Summary Procedure Rules or referring to a disciplinary tribunal: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(e)(i), (ii). As to the meaning of 'lay client' see PARA 1155 note 2; definition applied by Annexe J (The Complaints Rules) r 70(b). As to employed barristers see PARA 1037. As to the Summary Procedure Rules see PARAS 1266-1268.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(e).

13 Special provision is made for circumstances where a complaint discloses a prima facie case of professional misconduct against a registered European lawyer: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 40.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(f). As to the procedure for informal attendance see Annexe J (The Complaints Rules) rr 52-64; and PARAS 1259-1261.

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(h). As to the bringing of disciplinary charges where a complaint is referred to a tribunal see PARAS 1269-1280.

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(g). In such an instance the matter will be dealt with in accordance with Annexe L (The Summary Procedure Rules): see PARAS 1266-1268.

17 The code refers to a 'serious arrestable offence' as defined by the Police and Criminal Evidence Act 1984 s 116 (repealed).

18 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 37.

19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(a), (d). The Committee may dismiss a complaint only if the majority of the lay members present at the meeting consents to such dismissal: Annexe J (The Complaints Rules) rr 36(a), (d).

20 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 38. Those matters may include, but are not limited to: the barrister's previous conduct (including any disciplinary findings made against him as a student by his Inn, or any disciplinary findings made against him by any other professional body); the means by which any previous complaints against him have been disposed of; and the means by which complaints of a similar nature against other barristers have been disposed of: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 38.

21 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(b). If the complaint is so disposed of the Secretary of the Complaints Committee must notify the complainant and the barrister complained against of the manner of disposal of the complaint and the reasons for such disposal: Annexe J (The Complaints Rules) r 39.

22 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(c). Consideration of the complaint may be postponed at any time, whether to permit further investigation of the complaint to be made, or during the currency of related legal proceedings, or for any other reason the Committee sees fit: Annexe J (The Complaints Rules) r 36(c).

UPDATE

1254-1258 Consideration and investigation of complaints

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/A. CONSIDERATION AND INVESTIGATION OF COMPLAINTS/1257. Power to reopen and reconsider complaints.

1257. Power to reopen and reconsider complaints.

Both the Complaints Commissioner¹ and the Complaints Committee² may reopen or reconsider a complaint which has been disposed of³ either following a recommendation of the Legal Services Ombudsman⁴, where new evidence becomes available which leads to the conclusion that the complaint should be reopened or reconsidered⁵, or for some other good reason⁶. However, the Committee may not reopen or reconsider a complaint which has been disposed of following a hearing before a disciplinary or summary tribunal⁷.

If a case is reopened or reconsidered by either the Commissioner or the Committee, he or it may take any further or different action thought fit, as if the former decision had not been made⁸, although if the Committee has directed that the complaint form the subject matter of a charge before a disciplinary tribunal⁹, and charges have been forwarded to the clerk and served on the defendant, the Committee's actions are confined to instructing counsel for the Committee to offer no evidence on a charge or apply to the directions judge for the making of additions to or amendments of a charge¹⁰.

1 The Commissioner may reopen or reconsider a complaint which has been disposed of under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 13-15, or 21, 22 (see PARA 1254): Annexe J (The Complaints Rules) r 24. As to the Complaints Commissioner see PARA 1251. As to the Code of Conduct see PARA 1150.

2 As to the Complaints Committee see PARA 1251.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 24, 41.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 24(a), 41(a). As to the Legal Services Ombudsman see PARA 424.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 24(b), 41(b).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 24(c), 41(c).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 41. As to disciplinary tribunals see PARAS 1269-1280; as to summary tribunals see PARAS 1266-1268.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 24, 42.

9 He has given a direction under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(h) or r 37 (see PARA 1256): Annexe J (The Complaints Rules) r 42 (r 42 refers to r 28(h) or 30, which appear to refer to a previous edition of the Complaints Rules; those noted here are now intended). As to the bringing of charges before disciplinary tribunals see PARA 1269 et seq.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 42.

UPDATE

1254-1258 Consideration and investigation of complaints

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/A. CONSIDERATION AND INVESTIGATION OF COMPLAINTS/1258. Confidentiality.

1258. Confidentiality.

The Bar Standards Board¹ must respect the confidentiality of complaints and may not disclose the fact that a complaint has been made or details of the complaint or its disposal² unless:

- 1812 (1) disclosure is necessary for the purpose of investigating the complaint³;
- 1813 (2) disclosure is necessary for the purpose of keeping the complainant and the barrister informed of the progress of the complaint⁴;
- 1814 (3) the complainant and the barrister consent⁵;
- 1815 (4) the relevant professional body must be informed of a prima facie finding of professional misconduct or inadequate professional service against a registered European lawyer⁶;
- 1816 (5) the publication of a finding is required in pursuance of an informal, summary or disciplinary hearing⁷;
- 1817 (6) disclosure is necessary in respect of an application by a barrister for silk, judicial appointment, or to become a pupil supervisor, or a request from some other body for a Certificate of Good Standing in respect of a barrister⁸; or
- 1818 (7) there is another good reason⁹.

1 As to the Bar Standards Board see PARA 1049.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(a). As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(b) (i).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(b) (ii).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(b) (iii).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(b) (iv). ie disclosure may be made for the purposes of Annexe J (The Complaints Rules) r 40. As to what constitutes professional misconduct see PARA 1247; as to what constitutes inadequate professional service see PARA 1248; definitions applied by Annexe J (The Complaints Rules) r 70(b). As to the meaning of 'registered European lawyer' see PARA 1102 note 7; definition applied by Annexe J (The Complaints Rules) r 70(b).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(b) (v) (this provision and the provision following it (see note 8) are both numbered r 43(b)(v) in the Complaints Rules (reissued 1 Oct 2005) as published on the Bar Standards Board website). Thus disclosure may be made for the purposes of Annexe J (The Complaints Rules) rr 63, 64; Annexe K (The Disciplinary Tribunals Regulations); or Annexe L (The Summary Procedure Rules).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(b) (v) (this provision and the provision preceding it (see note 7) are both numbered r 43(b)(v) in the Complaints Rules (reissued 1 Oct 2005) as published on the Bar Standards Board website). Where disclosure is made in these circumstances, if any complaint has been made against the barrister concerned which has not been dismissed by the Commissioner (see PARA 1254), disposed of by the Committee under Annexe J (The Complaints Rules) r 36(a), (d) or (e) (see PARA 1256) or by any other panel to which it may have been referred by the Committee (see PARA 1254), the Bar Standards Board must simply indicate that a complaint has been received which has not been dismissed (Annexe J (The Complaints Rules) r 43(c)(i)); if a finding of professional

misconduct has been recorded against the barrister concerned, the Board must disclose the finding and the penalty (Annexe J (The Complaints Rules) r 43(c)(ii)); and if the request is from the selection panel or a member of its secretariat in respect of an application by a barrister for silk or if the request is from one of the Inns of Court in respect of an application by a barrister to become a pupil supervisor, if a finding of inadequate professional service has been recorded against the barrister concerned, the Board must disclose the finding and penalty (Annexe J (The Complaints Rules) r 43(c)(iii)). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 43(b) (vi).

UPDATE

1254-1258 Consideration and investigation of complaints

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/B. INFORMAL HEARINGS/1259. Conduct of hearings.

B. INFORMAL HEARINGS

1259. Conduct of hearings.

Where the Complaints Committee (the Committee')¹ decides that a complaint should be dealt with informally², it must direct that the barrister attend upon a panel appointed by the President³ consisting of two barristers and two lay representatives⁴; unless the panel otherwise decides, the senior barrister member will be the chairman of the panel⁵. The Secretary must make such further inquiries as he sees fit, or as are directed by the chairman to assist the deliberation of the panel, such as whether the complainant claims to have suffered financial loss as a result of the conduct complained of, and if so the exact nature and amount of that claimed loss and the evidence available to support the claim, and from the barrister the nature of the work he carried out for the complainant out of which the complaint arose, the fee rendered for such work, and whether or not such fee has been paid⁶. The barrister must attend on the panel at the day and time arranged, provide to the panel orally such information as he wishes to put before it in connection with his conduct in relation to the matters specified, and answer so far as he is able such further questions as the panel may put to him which may relate to any aspects of the conduct complained of⁷.

1 As to the Complaints Committee see PARA 1251.

2 Ie under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(f); see PARA 1256. As to the Code of Conduct see PARA 1150.

3 'President' means the President of the Council of the Inns of Court: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 1001; definition applied by Annexe J (The Complaints Rules) r 70(b). As to the Council of the Inns of Court see PARA 1053 et seq.

4 'Lay representative' means:

552 (1) a lay person appointed by the President of the Council of the Inns of Court to serve on disciplinary tribunals, summary procedure panels, informal hearings panels, interim suspension panels and appeal panels therefrom, adjudication panels, adjudication appeal panels and medical panels and review panels therefrom; or

553 (2) a lay person appointed by the Lord Chief Justice to serve on hearings before the Visitors; save that no person may be appointed as a lay representative if they are a member of the Complaints Committee or of the Bar Council or any of its other committees; or if they were a member of the Complaints Committee at any time when the matter which the tribunal or panel is dealing with was considered: para 1001.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 52. None of the members of the panel should be members of the Complaints Committee or of the Bar Standards Board or any of its committees, nor should they have been members of the Committee at any time when the complaint being dealt with by the panel was considered by the Committee: Annexe J (The Complaints Rules) r 52. When the Committee directs attendance upon the panel it must specify what, in summary form, are the matters upon which the Committee has found a prima facie case of misconduct to be disclosed and on which the barrister's explanation of his conduct is required (Annexe J (The Complaints Rules) r 53(a)), and whether, on the information available to it, the Committee also regards a prima facie case of inadequate professional service as having been disclosed, and if so what, in summary form, are the matters arising in that regard which the barrister will also be asked to explain (Annexe J (The Complaints Rules) r 53(b)). The Secretary must notify both the barrister and the complainant of these matters and as soon as practicable thereafter must send them a bundle of the papers to be considered by the panel and invite them within 14 days (which period may be

extended with the permission of the chairman of the Committee) to comment in writing on any of those matters or to send any other document to which they wish the panel to have regard: Annexe J (The Complaints Rules) r 54. As to what constitutes inadequate professional service see PARA 1248; definition applied by Annexe J (The Complaints Rules) r 70(b). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 55. The Secretary must also, subject to the direction of the chairman of the panel, keep the complainant informed of the progress of the complaint and of any further documents and other information to be considered by the panel and, so far as practicable, require the barrister and afford the complainant an opportunity to comment in advance of the hearing on any such information or documents: Annexe J (The Complaints Rules) r 56.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 57. The panel must consider whether to adjourn the hearing in order to enable the complainant to comment on any information provided by the barrister at the hearing which had not previously been disclosed by him: Annexe J (The Complaints Rules) r 57.

UPDATE

1259-1261 Informal hearings

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/B. INFORMAL HEARINGS/1260. Findings.

1260. Findings.

Following an informal hearing¹, the panel may conclude² that:

- 1819 (1) neither professional misconduct nor inadequate professional service has been established by the complainant, whereupon it must dismiss the complaint³;
- 1820 (2) notwithstanding the barrister's explanation, professional misconduct has been established, in which case it may: conclude that no further action will be taken on the complaint; give the barrister advice as to his future conduct; or admonish him⁴;
- 1821 (3) the barrister has provided inadequate professional service in respect of the subject-matter of the complaint⁵; or
- 1822 (4) the barrister has infringed a provision of the Code of Conduct⁶ but that such infringement did not amount to professional misconduct⁷.

The panel must provide reasons for reaching its decision⁸. Whatever conclusion it reaches, the panel may refer any issue of policy which arises to the relevant committee of the Bar Standards Board⁹, and may refer a matter back to the Complaints Committee for reconsideration if it considers that its powers are not sufficient to deal with the gravity of the complaint revealed at the hearing or that other issues are raised which require further consideration by the Committee¹⁰.

1 As to the conduct of informal hearings see PARA 1259.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 58. If the panel is not unanimous on any issue, the finding made must be that of the majority of them; and if the panel is equally divided, the burden of proof being on the complainant, the finding made must be that most favourable to the barrister: Annexe J (The Complaints Rules) r 60.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 58(a). As to what constitutes professional misconduct see PARA 1247; as to what constitutes inadequate professional service see PARA 1248; definitions applied by Annexe J (The Complaints Rules) r 70(b).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 58(b). Any such advice or admonishment may be delivered orally or in writing: Annexe J (The Complaints Rules) para 58(b).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 58(c). The panel may reach this conclusion regardless of the conclusion reached in relation to the barrister's professional conduct but only if the complainant is the barrister's lay client or his duly authorised representative, or in the case of an employed barrister, the person to whom he has supplied the professional service in question: Annexe J (The Complaints Rules) r 58(c). As to the meaning of 'lay client' see PARA 1155 note 2; definition applied by Annexe J (The Complaints Rules) r 70(b). As to employed barristers see PARA 1037. As to the penalties where a charge of inadequate professional service has been found proved see PARA 1261.

6 I.e a provision referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246): Annexe J (The Complaints Rules) r 58(d).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 48(d). In such circumstances, and whether or not it concludes that inadequate professional service has been established, the panel may direct the Secretary of the Complaints Committee that a written warning be sent to

the barrister or that a financial penalty be imposed on him for the infringement of the Code or both: Annexe J (The Complaints Rules) r 58(d). As to appeals from written warnings and financial penalties see PARA 1281.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 59.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 58(e). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 58(f).

UPDATE

1259-1261 Informal hearings

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/B. INFORMAL HEARINGS/1261. Penalties.

1261. Penalties.

A barrister against whom a charge of inadequate professional service¹ has been found proved in an informal hearing² may be directed to make a formal apology to the complainant for the conduct complained of³; to repay or remit all or part of any fee rendered in respect of the inadequate service⁴; to pay compensation to the complainant in such sum as directed, not exceeding £5,000⁵; or to complete continuing professional development of such nature and duration as directed⁶. The panel may also determine that it is not appropriate to take any action in respect of the complaint⁷ or adjourn consideration of the remedy to permit investigation or further investigation of the consequences of the inadequate professional service for the complainant, and reconvene when the results of such investigations are known⁸; and the panel may, if it considers that the circumstances of the complaint are relevant to the barrister's position as a pupil supervisor, notify the barrister's Inn of its concerns in such manner as it sees fit⁹.

An appeal lies at the instance of the barrister from any decision of a panel that a barrister has provided inadequate professional service, and against any decision as to the remedy to be granted to the complainant for such service, in the same manner as an appeal lies from a decision of an adjudication panel in respect of the same matters¹⁰. The Secretary must notify both the complainant and the barrister of the decision and, if the complaint is dismissed, of the reasons for it¹¹.

1 As to what constitutes inadequate professional service see PARA 1248; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 70(b). As to the Code of Conduct see PARA 1150.

2 See PARAS 1259-1260.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 61(c).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 61(d).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 61(e). In determining whether any sum is to be paid under this provision, or in fixing the amount of such sum, the panel must have regard in particular to any loss suffered by the complainant as a result of the inadequate professional service, the availability to the complainant of other forms of redress, the gravity of the conduct complained of, and the fee claimed by the barrister for the inadequate service: Annexe J (The Complaints Rules) r 61.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 61(f). As to continuing professional development see PARA 1154. The defendant may be required to provide satisfactory proof of compliance with this order to the Complaints Committee: Annexe J (The Complaints Rules) r 61(f). As to the Complaints Committee see PARA 1251.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 61(a).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 61(b).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 64. As to pupil supervisors see PARAS 1082-1087.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 62. As to appeals from decisions of adjudication panels see PARAS 1282-1283.

- 11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 63.

UPDATE

1259-1261 Informal hearings

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/C. ADJUDICATION PANELS/1262. Constitution and powers of adjudication panels.

C. ADJUDICATION PANELS

1262. Constitution and powers of adjudication panels.

Adjudication panels are appointed by the President of the Council of the Inns of Court¹ to determine complaints which, in the Complaints Committee's² consideration do not raise a prima facie case of professional misconduct³, but do raise a prima facie case that the barrister concerned has provided inadequate professional service⁴ to the complainant⁵. Panels consist of two lay representatives, one of whom must act as chairman, and two barrister members, at least one of whom must be a Queen's Counsel⁶.

Panels are empowered:

- 1823 (1) to consider any complaint referred to them and to direct such investigations as they see fit in respect of it⁷;
- 1824 (2) to dismiss any complaint without making a finding as to the existence or otherwise of inadequate professional service if they conclude that, due to lapse of time, disputes of fact cannot fairly be resolved by the panel, or for any other reason the complaint cannot fairly be determined⁸;
- 1825 (3) to determine whether the barrister concerned has provided inadequate professional service in respect of the matter complained of⁹; and
- 1826 (4) to determine what remedy should be granted to the complainant in respect of such inadequate service¹⁰.

1 As to the Council of the Inns of Court see PARA 1053 et seq.

2 As to the Complaints Committee see PARA 1251.

3 As to what constitutes professional misconduct see PARA 1247; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 23(a). As to the Code of Conduct see PARA 1150. All barristers are subject to the Adjudication Panel and Appeals Rules: para 903(g).

4 As to what constitutes inadequate professional service see PARA 1248; definition applied by Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 23(a).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 1. As to the Complaints Committee's consideration regarding inadequate professional service and referral to an Adjudication Panel see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(e); and PARA 1256.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 2. No person may be appointed to an adjudication panel if they are a member of the Complaints Committee or of the Bar Standards Board or any of its other committees, or if they were a member of the Committee at any time when it considered the complaint being dealt with by the panel: Annexe P (Adjudication Panel and Appeals Rules) r 1. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). As to Queen's Counsel see PARAS 1039, 1124. As to the meaning of 'lay representative' see PARA 1259 note 4.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 4(a). As to the direction of investigations see PARA 1263.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 4(b).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 4(c).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 4(d). As to the remedies available to Adjudication Panels see PARA 1264.

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1263. Preparatory matters.

When a complaint is referred to an adjudication panel¹, it must consider what, if any, further investigation is required to be made in order for the panel to deal fairly with the matters falling to it for decision, and the Secretary of the Complaints Committee² must make such investigations as the panel directs to assist its deliberations³. Whether or not there are additional investigations to make, the Secretary must notify both the barrister and the complainant of the matters that the Committee has directed the panel to consider, and as soon as practicable thereafter must prepare a bundle of papers to be considered by the panel, copy them to the barrister and the complainant, and invite their written comments within 14 days⁴. At the expiration of this period or on completion of his inquiries, the Secretary must copy any further papers that are to be considered by the panel to the barrister and the complainant, and request the President of the Council of the Inns of Court⁵ to appoint a panel and set a date for it to meet⁶. Both the barrister and the complainant must be informed of the date of the hearing⁷. The complainant must be invited to make any further comments in writing which must arrive not less than seven days before the date of the hearing; and such comments must be copied to the barrister and the panel⁸.

1 As to the referral of complaints to adjudication panels see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(e); and PARA 1256. As to the constitution and powers of adjudication panels see PARA 1262. As to the Code of Conduct see PARA 1150.

2 As to the Complaints Committee see PARA 1251.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 5. Such investigations may include investigations as to whether the complainant claims to have suffered financial loss as a result of the conduct complained of, and if so the exact nature and amount of that claimed loss and the evidence available to support the claim, and from the barrister the nature of the work he carried out for the complainant out of which the complaint arose, the fee rendered for such work, and whether or not such fee has been paid: Annexe P (Adjudication Panel and Appeals Rules) r 5.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 6. The 14-day period may be extended with the permission of the chairman of the panel: Annexe P (Adjudication Panel and Appeals Rules) r 6.

5 As to the Council of the Inns of Court see PARA 1053 et seq.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 7.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 8.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 8.

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1264. Consideration of complaints by adjudication panels.

An adjudication panel¹ may consider complaints and the results of any investigations in whatever manner it thinks fit, and may adjourn consideration of any complaint at any time and for any reason, and in particular to enable the complainant to comment on any information provided by the barrister at the hearing which had not previously been disclosed by him². If, following such consideration, the panel decides that the complainant has established on the balance of probabilities that the barrister concerned has provided inadequate professional service³ to him, it must consider what remedy should be granted in respect of the service which it has found to have been inadequate⁴, to which end it may either determine that it is not appropriate to take any action in respect of the inadequate service⁵ or direct the barrister to make a formal apology to the complainant for the inadequate service provided⁶, to repay or remit all or part of any fee rendered in respect of the inadequate service⁷, or to pay compensation to the complainant in such sum as the panel directs not exceeding £5,000⁸. Following any such finding, the panel must give notice in writing to the barrister and to the complainant of the respects in which it has found the barrister to have provided inadequate professional service, and the reasons for such finding, and of the remedy to be granted to the complainant⁹.

The panel may also decide on consideration that the complainant has not established on the balance of probabilities that the barrister concerned has provided inadequate professional service¹⁰ or that for any reason the complaint cannot fairly be determined by it¹¹; in either case, it must thereupon dismiss the complaint and give notice in writing of its decision and the reasons for it to the barrister and the complainant¹².

If the panel is not unanimous on any issue, the finding made must be that of the majority of the members of the panel; and if the panel is equally divided, the burden of proof being on the complainant, the finding must be that most favourable to the barrister¹³. There is a right of appeal¹⁴.

1 As to the referral of complaints to adjudication panels see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(e); and PARA 1256. As to the constitution and powers of adjudication panels see PARA 1262. As to the Code of Conduct see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 9.

3 As to what constitutes inadequate professional service see PARA 1248; definition applied by Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 23(a).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 10(c).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 11(a).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 11(b).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 11(c).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 11(d). In determining whether any such sum is to be paid, or in fixing the amount of such sum, the panel must in particular have regard to any loss suffered by the complainant as a result of the inadequate professional service, the availability to the complainant of other forms of redress, the gravity of the conduct complained of, and the fee claimed by the barrister for the inadequate service: Annexe P (Adjudication Panel and Appeals Rules) r 11.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 12.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 10(b).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 10(a).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 10(a), (b).

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 13.

14 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) rr 16-22; and PARAS 1282-1283.

UPDATE

1264 Consideration of complaints by adjudication panels

NOTES 5-8--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P r 11 amended on 1 June 2009.

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1265. Reference, publication and notification.

Whether or not an adjudication panel¹ has determined that a barrister has provided an inadequate professional service², it may refer any matter of policy which arises to the relevant committee of the Bar Standards Board³.

No finding of a panel is publishable, except by the Complaints Commissioner in any annual or other report on his work⁴.

If the panel considers that the circumstances of the complaint are relevant to the barrister's capacity as a pupil supervisor, it may notify the barrister's Inn of its concern in such manner as it sees fit⁵. In respect of an application by a barrister for silk, if a finding of inadequate professional service has been recorded against the barrister concerned, the Board must disclose the finding and penalty⁶.

1 As to the referral of complaints to adjudication panels see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(e); and PARA 1256. As to the constitution and powers of adjudication panels see PARA 1262. As to the Code of Conduct see PARA 1150.

2 As to the determinations of an adjudication panel see PARA 1264. As to what constitutes inadequate professional service see PARA 1248; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 23(a).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 14. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 15(a). In such a case, the identities of the parties must so far as possible be concealed, unless the barrister concerned seeks that any finding be published, in which case the manner and extent of publication is at the discretion of the Commissioner: Annexe P (Adjudication Panel and Appeals Rules) r 15(a).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 15(b). As to pupil supervisors see PARAS 1082-1087. As to the Inns of Court see PARAS 1050-1052.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 15(c). As to applications for silk see PARA 1124.

UPDATE

1265 Reference, publication and notification

TEXT AND NOTES 4-6--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P r 15 amended on 1 June 2009.

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D. SUMMARY HEARINGS

1266. Preparatory.

As soon as possible after the referral of a case to summary procedure¹, the Secretary of the Complaints Committee² must write to the defendant³ notifying him of the Committee's decision and enclosing a copy of the Summary Procedure Rules⁴. The letter of notification requires the defendant to state whether or not he admits the charges and, if he does not, whether or not he challenges any of the facts detailed in the statement of facts⁵, and if he admits the charges or does not challenge any of the facts detailed in the statement of facts, he will also be asked to say whether he is prepared to agree that the charges should be dealt with by summary procedure⁶. If the defendant admits the charges or does not challenge any significant facts and, in either case, if he agrees that his case should be dealt with by summary procedure, the case proceeds to a summary hearing⁷, failing which it proceeds to a disciplinary tribunal⁸.

1 As to the referral of cases to summary procedure see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(g); and PARA 1256. As to the Code of Conduct see PARA 1150.

2 As to the Complaints Committee see PARA 1251.

3 ie the barrister against whom the complaint has been made: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 1(a).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 3(a). Provision is made as to the documents to be served on the defendant, and the establishment of a hearing date: see Annexe L (The Summary Procedure Rules) rr 3(b)-(e), 4. All barristers are subject to the Summary Procedure Rules: para 903(c).

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 5(a)(i). Failure of the defendant to respond to these questions within 30 days of the date of the Secretary's letter must be construed as refusal to admit the charges, to agree the statement of facts and to accept summary procedure: Annexe L (The Summary Procedure Rules) r 5(c).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 5(a)(ii). If the only charge alleges breach of para 402 (ie the insurance requirement: see PARA 1239), the Complaints Committee has so directed when referring the case to summary procedure, and the defendant admits the charges and agrees that they should be dealt with by summary procedure, he will also be asked to say whether he wishes to attend the summary hearing: Annexe L (The Summary Procedure Rules) r 5(a)(iii).

7 As to the procedure at summary hearings see PARA 1267.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 5(b). As to disciplinary tribunals see PARAS 1269-1280.

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1267. Procedure at summary hearings.

A summary hearing panel consists of not more than five, and not less than three, persons appointed by the President of the Council of the Inns of Court¹ and must include at least one Queen's Counsel as chairman of the panel, one junior over five years' call, and, where the number of barristers on the panel exceeds two, two lay representatives².

Procedure at summary hearings³ is, however, informal, the details being at the discretion of the chairman⁴. The hearing should normally be in public⁵ and the defendant should attend⁶, unless he has elected not to⁷. The defendant may be represented, as may the Complaints Committee in complex cases⁸, although the defendant is not entitled to be represented if he has elected not to attend the hearing⁹. No witnesses may be called without the prior consent of the chairman and the submission of a proof of evidence¹⁰. A record of each summary hearing must be taken electronically and retained for at least two years¹¹.

1 As to the Council of the Inns of Court see PARA 1053 et seq.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 2(a)-(c). Where there are only two barristers on the panel, only one lay representative need be included: Annexe L (The Summary Procedure Rules) r 2(d). As to the Code of Conduct see PARA 1150. As to Queen's Counsel see PARAS 1039, 1124. As to the meaning of 'lay representative' see PARA 1259 note 4.

No person may be appointed to serve on a panel if they are a member of the Complaints Committee or of the Bar Standards Board or any of its other committees, or if they were a member of the Committee at any time when it considered the complaint being dealt with by the panel: Annexe L (The Summary Procedure Rules) r 2(i). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

The proceedings of a summary hearing are valid notwithstanding that one or more of the members other than the chairman becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing of the charges is not reduced below three and continues to include the chairman and at least one of the lay representatives: Annexe L (The Summary Procedure Rules) r 2(ii).

3 'Summary hearing' means the hearing of a summary case by a panel appointed under the Summary Procedure Rules: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 1(a).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(a).

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(d). The hearing need not be in public if the panel considers that there are special reasons why the hearing ought to be held in private, and the defendant consents to the hearing taking place in private: Annexe L (The Summary Procedure Rules) r 7(d)(i), (ii).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(f). Should the defendant fail to attend, the summary hearing may proceed in his absence, subject to the panel being satisfied that this course is appropriate, that all relevant procedures requiring the defendant's attendance have been complied with and that no acceptable explanation for the defendant's absence has been provided. If the panel is not so satisfied, it has the power to adjourn the matter, to a specific date or sine die, or to refer the matter back to the Complaints Committee, as it may think fit: Annexe L (The Summary Procedure Rules) r 7(f).

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(g).

8 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(c). As to the Complaints Committee see PARA 1251.

9 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(g)(i).

10 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(e).

11 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 7(h). The record must be retained under the arrangements of the President for two years, until the expiry of the period allowed for notification of intention to appeal or until the conclusion of any appeal, whichever period is longest: Annexe L (The Summary Procedure Rules) r 7(h).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/D. SUMMARY HEARINGS/1268. Finding and sentence.

1268. Finding and sentence.

At the conclusion of a summary hearing¹, the finding on each charge must be set down in writing and signed by the chairman of the panel together with the reasons for that finding², and the chairman must then announce the panel's decisions as to finding³. If the panel finds any charge proved, it must then consider its decision as to sentence⁴. A barrister against whom a charge of professional misconduct has been found proved may be suspended from practising either for a fixed period of up to three months or a period until the barrister has complied with any relevant practising requirements⁵; prohibited from accepting or carrying out public access instructions⁶; ordered to pay a fine of up to £500 to the Bar Standards Board⁷; ordered to forego or repay all or part of his fees⁸; ordered to complete continuing professional development of such nature and duration as directed⁹; reprimanded¹⁰; or advised as to his future conduct¹¹. If the panel find a charge of infringement¹² to be proved against a barrister it may direct the Secretary of the Complaints Committee that a written warning be sent to the barrister concerned, or a financial penalty imposed on him, or both¹³. A barrister against whom a charge of inadequate professional service has been found proved may be directed to make a formal apology to the complainant for the conduct in relation to which the finding was made¹⁴, to repay or remit all or part of any fee rendered in respect of the inadequate service¹⁵, to pay compensation to the complainant in such sum as directed not exceeding £5,000¹⁶, or to complete continuing professional development of such nature and duration as directed¹⁷, or may be prohibited from accepting or carrying out public access instructions¹⁸. The hearing is also empowered to decide that no action should be taken against the barrister¹⁹, to order the reduction or cancellation of fees paid by the Legal Services Commission in connection with services provided by the barrister as part of the Community Legal Service or Criminal Defence Service²⁰, or to order that the barrister be excluded from providing representation so funded²¹. Where applicable, a defendant may also be suspended from the register of European lawyers²². If the defendant was not present throughout the proceedings, the sentence must include the statement that the finding and sentence were made in his absence²³.

Whether or not the panel has found any charge proved, it may notify the barrister's Inn if it considers that the circumstances of the complaint are relevant to his capacity as a pupil supervisor²⁴, and may refer any matter of policy which arises to the relevant committee of the Board²⁵. Provision is made for the reporting and publication of the finding and sentence²⁶. A summary hearing has no power to award costs²⁷. There is a right of appeal²⁸.

1 As to the meaning of 'summary hearing' see PARA 1267 note 3.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 8. As to the Code of Conduct see PARA 1150. If the members of the panel are not unanimous as to the finding on any charge, the finding to be recorded on that charge must be of the majority; and if the members are equally divided as to the finding on any charge, then, the burden of proof being on the complainant, the finding to be recorded on that charge must be that which is most favourable to the defendant: Annexe L (The Summary Procedure Rules) r 8. As to the meaning of 'defendant' see PARA 1266 note 3.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 8.

4 If the panel finds any charge proved, the Secretary of the Complaints Committee (see PARA 1251) must lay before the panel details of any previous finding of professional misconduct, or of breach of proper professional standards or of inadequate professional service or any finding of guilt on a charge consisting of a legal aid

complaint against the defendant, and after hearing any representations or considering any written submissions by or on behalf of the defendant, the panel's decision as to sentence must be set down in writing and signed by the chairman: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(a). If the members of the panel are not unanimous as to the sentence, the sentence to be recorded must be that of the majority: Annexe L (The Summary Procedure Rules) r 9(a). If the members of the panel are equally divided as to the sentence, the sentence to be recorded must be that which is most favourable to the defendant: Annexe L (The Summary Procedure Rules) r 9(a). The chairman must then announce the panel's decision as to sentence: Annexe L (The Summary Procedure Rules) r 9(a). As to what constitutes professional misconduct see PARA 1247. As to what constitutes inadequate professional service see PARA 1248.

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(b)(i), (h)(i), (i). Suspension may be either unconditional or subject to conditions: Annexe L (The Summary Procedure Rules) r 9(b)(i). The practising requirements are those under para 202(a)-(d) (see PARA 1153), or Annexe B (The Registered European Lawyers Rules) r 5(1) or (2) (see PARA 1166): Annexe L (The Summary Procedure Rules) r 9(b)(i). Where a barrister is suspended, his Inn may be required to take action to carry the suspension into effect: see Annexe L (The Summary Procedure Rules) r 13.

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(b)(ii), (h)(ii), (i). Prohibition may be either unconditional or subject to conditions and may be either indefinite or for a prescribed period: Annexe L (The Summary Procedure Rules) r 9(b)(ia). As to public access see PARA 1176. Where a barrister is prohibited, his Inn may be required to take action to carry the prohibition into effect: see Annexe L (The Summary Procedure Rules) r 13.

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(b)(iii), (h)(iii), (i). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

8 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(b)(iv), (h)(iv), (i).

9 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(b)(v), (h)(v), (j). As to continuing professional development see PARA 1154. The defendant may be required to provide satisfactory proof of compliance with this order to the Committee: Annexe L (The Summary Procedure Rules) r 9(b)(v).

10 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(b)(vi), (h)(vi), (j).

11 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(b)(vii), (h)(vii), (j).

12 If where barrister is charged with professional misconduct comprising an infringement of any of the provisions referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246) and the panel finds that there was an infringement of that provision but that the charge of professional misconduct is not proved: Annexe L (The Summary Procedure Rules) r 9(c).

13 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(c).

14 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(d)(i), (i).

15 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(d)(ii), (i).

16 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(d)(iii), (i). In determining whether any sum is to be paid under this provision, or in fixing the amount of such sum, the panel must have regard in particular to any loss suffered by the applicant as a result of the inadequate professional service, the availability to the complainant of other forms of redress, the gravity of the conduct complained of, and the fee claimed by the barrister for the inadequate service: Annexe L (The Summary Procedure Rules) r 9(d).

17 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(d)(iv), (i). The defendant may be required to provide satisfactory proof of compliance with this order to the Committee: Annexe L (The Summary Procedure Rules) r 9(d)(iv).

18 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(d)(v), (i). Prohibition may be either unconditional or subject to conditions and may be either indefinite or for a prescribed period: Annexe L (The Summary Procedure Rules) r 9(d)(v).

19 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(e).

20 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(f), (h)(viii), (ix), (i). As to the meaning of 'Legal Services Commission' see PARA 1161 note 18. As to the payment of fees by the Legal Services Commission in connection with services provided as part of the Community Legal Service or Criminal Defence Service see the Administration of Justice Act 1985 s 41(2); and PARA 1253. As to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq.

21 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(g), (h)(x).

22 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(h)(xii). As to the registration of European lawyers see PARA 1102.

23 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 9(h)(xi).

24 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) r 9(k). As to pupil supervisors see PARAS 1082-1087.

25 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) r 9(l).

26 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) rr 11, 14.

27 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 10.

28 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe L (The Summary Procedure Rules) r 12; and PARA 1284.

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E. PROCEEDINGS BEFORE DISCIPLINARY TRIBUNALS

1269. Disciplinary charges.

When the Complaints Committee¹ directs that a complaint should form the subject matter of a charge before a disciplinary tribunal², the Secretary of the Complaints Committee must be responsible for preferring the charge on behalf of the Bar Standards Board³, subject to the direction of the Chairman of the Committee⁴. The investigations officer of the Board is responsible for the conduct of any disciplinary proceedings brought on its behalf⁵. The investigations officer must arrange for the appointment of counsel to settle the charge and to present the case before the tribunal, and may arrange for the appointment of a solicitor or such other person as may be necessary to assist counsel and prepare the case⁶.

Counsel so appointed must settle such charges as he considers appropriate founded upon the facts or evidence from which the complaint arose, and any further or other matters which have been revealed by investigations directed by counsel, the investigations officer, the Secretary or the Committee⁷. If the Committee considers that the facts of the complaint are unlikely to be disputed (for example because it involves a criminal conviction), that witnesses are unlikely to be called for the hearing, that the case needs to be resolved urgently, or that there is some other good reason, it may direct that the prosecution of the charges be expedited⁸.

It is the responsibility of the investigations officer, subject to the supervision of the Secretary of the Committee, both to forward the charge to the clerk to the tribunal⁹, together with the other specified documents¹⁰, and to make any necessary administrative arrangements for the summoning of witnesses, the production of documents, and generally for the proper presentation of the case on behalf of the Board before the tribunal¹¹.

Inquiries must be made of the Board and the Under-Treasurer or Sub-Treasurer of the barrister's Inn¹² concerning any previous findings of misconduct against him, so that this information may be available to be placed before the tribunal if any charge against him is found to have been proved¹³.

1 As to the Complaints Committee see PARA 1251.

2 I.e. under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(h) or r 37 (see PARA 1256). As to the Code of Conduct see PARA 1150. As to disciplinary tribunals see PARA 1269 et seq.

3 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) rr 44, 46. As to Bar Standards Board see PARA 1049.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 46.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 46. With the approval of the Finance and the Standards Committees, the Complaints Committee may authorise the Secretary to arrange that counsel, or any other persons appointed pursuant to Annexe J (The Complaints Rules) r 46 to assist in the preparation or presentation of the Committee representative's case before the disciplinary

tribunal, be paid reasonable remuneration for work done on the Committee's behalf; the cost of such remuneration is to be borne by the Bar Council: Annexe J (The Complaints Rules) r 51.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 47. Such charges may be of professional misconduct and, where appropriate, of inadequate professional service, save that no charges of inadequate professional service must be settled unless the complainant is the barrister's lay client or his duly authorised representative or, in the case of an employed barrister, the person to whom he has supplied the professional services in question: Annexe J (The Complaints Rules) r 47. As to what constitutes professional misconduct see PARA 1247; definition applied by Annexe J (The Complaints Rules) r 70(b). As to what constitutes inadequate professional service see PARA 1248; definition applied by Annexe J (The Complaints Rules) r 70(b). As to the meaning of 'lay client' see PARA 1155 note 2; definition applied by Annexe J (The Complaints Rules) r 70(b). As to employed barristers see PARA 1037.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 45.

9 In accordance with Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 5: see PARA 1271.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 48(a).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 48(b).

12 If a barrister against whom a complaint is made is a member of more than one Inn, references to his Inn are references to the Inn by which he was called, unless he is a bencher of an Inn other than his Inn of call, in which case 'his Inn' means the Inn of which he is a bencher: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 50. As to the Inns of Court see PARAS 1050-1052.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 49.

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

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1270. Appointment and composition of tribunals.

Disciplinary tribunals are appointed by the Council of the Inns of Court¹ and conduct their proceedings in accordance with, and have the powers and functions specified in, the Disciplinary Tribunals Regulations². The President of the Inns' Council³ must appoint disciplinary tribunals to sit at such times as are necessary for the prompt and expeditious determination of charges against barristers⁴. A disciplinary tribunal should in general⁵ consist of five persons nominated by the President, namely, a judge⁶, two lay representatives⁷, and two practising barristers⁸. The President must select another member of the relevant class to fill any vacancy in the tribunal that has arisen prior to the substantive hearing of the charge⁹; and, at any time before the commencement of the substantive hearing of the charge, the President may cancel any or all of the nominations made pursuant to these provisions, and make such alternative nominations as, in the exercise of his discretion, he deems to be expedient¹⁰. A member of a disciplinary tribunal who has been absent for any time during a sitting may take no further part in the proceedings¹¹.

The proceedings of a disciplinary tribunal are valid notwithstanding that after the convening order has been issued¹² one or more of the members other than the chairman or the lay representative becomes unable to continue to act or disqualified from continuing to act, so long as the number of members present throughout the substantive hearing of the charge is not reduced below three and continues to include the chairman and the lay representative¹³.

The President must appoint a person or persons to act as clerk or clerks to the disciplinary tribunals¹⁴; and no person who has been engaged in the investigation of a complaint against a barrister¹⁵ may act as clerk in relation to disciplinary proceedings arising out of that complaint¹⁶.

1 See the Introduction and Constitutions of the General Council of the Bar, the Council of the Inns of Court and the Inns of Court and the Bar Educational Trust (2001) Pt III (Constitution of the Council of the Inns of Court) para 1(f); and PARA 1056. As to the Introduction and Constitutions see PARA 1042 note 8.

2 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations). As to the Code of Conduct see PARA 1150.

3 Any duty or function or step which pursuant to the provisions of Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) is to be discharged or carried out by the President of the Inns' Council may, if he is unable to act due to absence or any other reason, be discharged or carried out by any other member of the Inns' Council, the Treasurer of any Inn or any other person nominated in writing by the President for any specific purpose: Annexe K (The Disciplinary Tribunals Regulations) reg 31(1).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 3. As to the bringing of disciplinary charges see PARA 1269.

5 Special provisions have effect for the composition of the tribunal if the barrister charged is employed or non-practising or a registered European lawyer: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(i), (ii).

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(1)(a). The judge may be a retired circuit judge or retired judge of the High Court provided that he continues to be permitted to sit as an additional judge, has done so in the last 12 months, and has, within the last 12 months and following consultation with the Chairman of the Bar Standards Board, been appointed to a panel of such judges by the President: Annexe K (The Disciplinary Tribunals Regulations) reg 2(1)

(a)(i)-(iii). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

7 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(1)(b). 'Lay representative' means a lay person appointed by the President of the Inns' Council to sit on disciplinary tribunals: para 1001, Annexe K (The Disciplinary Tribunals Regulations) reg 1(c).

8 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(1)(c). The two practising barristers must be of not less than five years' standing and not more than 70 years of age: Annexe K (The Disciplinary Tribunals Regulations) reg 2(1)(c). The composition of disciplinary tribunals and in particular the fact that a majority of members are barristers does not infringe the principle *nemo iudex in causa sua*: *Re S (a barrister)* [1981] QB 683, [1981] 2 All ER 952. The proceedings at such tribunals are essentially governed by the rules of natural justice: see PARA 1276. No person may be nominated to serve on a tribunal if they are a member of the Complaints Committee or of the Bar Standards Board or any of its other committees or if they were a member of the Complaints Committee at any time when it considered the matter being dealt with by the tribunal: Annexe K (The Disciplinary Tribunals Regulations) reg 2(1)(iii). As to the Complaints Committee see PARA 1251.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(2).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(3).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(5).

12 As to convening orders see PARA 1272.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(4).

14 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 4. The clerk's function is to perform the functions specified in the Disciplinary Tribunals Regulations and such other functions as the President or the chairman of any tribunal may direct: Annexe K (The Disciplinary Tribunals Regulations) reg 4.

15 In accordance with the relevant procedure or otherwise: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 4. 'Relevant procedure' means the procedure adopted by the Complaints Committee from time to time for preferring charges against barristers: Annexe K (The Disciplinary Tribunals Regulations) reg 1(a).

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 4.

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

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1271. Service of documents.

Following the formulation of the charge or charges by counsel, an official of the Complaints Committee¹ must cause a copy to be served on the barrister concerned (the 'defendant'), together with a copy of the Disciplinary Tribunals Regulations² and details of any directions sought³; and at the same time he must cause copies of the charge or charges to be supplied to the President of the Inns' Council⁴.

Such documents, and any other documents required to be served on a barrister arising out of, or in connection with, disciplinary proceedings, are deemed to have been validly served if sent by registered post, recorded delivery or receipted hand delivery⁵ to the address notified by the barrister⁶, an address to which the barrister may request in writing that such documents be sent, or, in the absence of such a request, to his last known address; and such service is deemed to have been made on the fifth working day after the date of posting or on the next working day after receipted hand delivery⁷. In every case actual service is sufficient service⁸. Service may also be effected in any way directed by the directions judge or the chairman of the disciplinary tribunal⁹.

¹ This duty is described in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) as vesting in a 'PCC Representative' but it is assumed that all such duties so described are now carried out by an official of the Complaints Committee. As to the Code of Conduct see PARA 1150.

² See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations).

³ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 5(1). The documents must be served not later than ten weeks (or five weeks if the Complaints Committee has directed that the prosecution of the charges be expedited) after the date on which the complaint was referred to the tribunal: Annexe K (The Disciplinary Tribunals Regulations) reg 5(1).

⁴ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 5(2). As to the Inns' Council see PARAS 1053-1057.

⁵ 'Receipted hand delivery' means a delivery by hand which is acknowledged by a receipt signed by the barrister or his clerk: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 30.

⁶ See notified by the barrister pursuant to the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 202(d) (see PARA 1153).

⁷ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 30(1).

⁸ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 30(2).

⁹ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 30(3).

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1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

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1272. Convening orders.

After receipt of the copy charge or charges¹, and in any case not later than 14 days before the substantive hearing, the President of the Inns' Council² must issue an order (the 'convening order') specifying the date of the sitting of the disciplinary tribunal³ at which it is proposed the charge or charges should be heard⁴, the identities of those persons who it is proposed should constitute the disciplinary tribunal to hear his case⁵, and the identity of the clerk⁶. The President must arrange for the service⁷ of the convening order on the defendant, and for copies of it to be supplied to the nominated members of the tribunal, and the clerk⁸.

The defendant has the right, upon receipt of the convening order, to give notice to the President objecting to any one or more of the proposed members of the tribunal⁹. Upon receipt of any such objection, the President must, if satisfied that it is properly made, exercise his power¹⁰ to nominate a substitute member or members of the tribunal, and must notify the defendant accordingly; and upon receipt of such notification, the defendant has mutatis mutandis in relation to such substitute member or members the like right of objection as is mentioned above¹¹. No objection to any member of the tribunal is, however, valid on the ground that he has or may have had knowledge of a previous charge of professional misconduct¹² or breach of proper professional standards or a charge consisting of a legal aid complaint¹³ against the defendant, or of any sentence imposed on the defendant in connection therewith¹⁴.

¹ le pursuant to the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 5 (see PARA 1271). As to the Code of Conduct see PARA 1150.

² As to the delegation of the President's duties and functions see PARA 1270 note 3.

³ As to the composition of disciplinary tribunals see PARA 1270.

⁴ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 7(1)(a).

⁵ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 7(1)(b).

⁶ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 7(1)(c).

⁷ As to service of documents see PARA 1271.

⁸ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 7(2). The convening order must draw the defendant's attention to his right to represent himself or be represented by counsel, with or without instructing a solicitor, as he thinks fit; his right to inspect and be given copies of documents referred to in the list served pursuant to Annexe K (The Disciplinary Tribunals Regulations) reg 8 (see PARA 1273); and his right (without prejudice to his right to appear and take part in the proceedings) to deliver a written answer to the charge or charges if he thinks fit: Annexe K (The Disciplinary Tribunals Regulations) reg 7(2)(a)-(c). It must also contain words drawing the attention of the defendant to the rights conferred by Annexe K (The Disciplinary Tribunals Regulations) reg 7(2)-(5) (see notes 9-14): Annexe K (The Disciplinary Tribunals Regulations) reg 7(6).

⁹ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 7(3). Such notice must specify the ground of objection: reg 7(3).

10 lie under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 2(3): see PARA 1270.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 7(4).

12 As to what constitutes professional misconduct see PARA 1247; definition applied by Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 1(c).

13 As to legal aid complaints see PARA 1240 note 9.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 7(5).

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

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1273. Documents to be served.

A barrister who is to be charged before a disciplinary tribunal must as soon as practicable be supplied with a copy of the statement of the evidence of each witness intended to be called in support of the charge or charges¹ and a list of the documents intended to be relied on by the official of the Complaints Committee². If any of these are not supplied to the barrister at least ten days before the date of the preliminary hearing³, the Committee official must provide to the barrister and the directions judge, at least ten days before the date of the preliminary hearing, details of the statements of evidence that are still being sought and a statement of when it is believed that it will be practicable to supply those statements to the defendant⁴.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 8(1)(a). As to the Code of Conduct see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 8(1)(b). As to officials of the Complaints Committee see PARA 1271 note 1.

3 As to the preliminary hearings see PARA 1274.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 8(2). These provisions do not, however, preclude the receipt by a disciplinary tribunal of the evidence of a witness where a copy of his statement has not been served on the defendant (within the specified time, or at all), or of a document not included in the list of documents, provided the tribunal is of opinion that the defendant is not materially prejudiced thereby, or on such terms as are necessary to ensure that no such prejudice arises: Annexe K (The Disciplinary Tribunals Regulations) reg 8(3).

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

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1274. Preliminary hearing.

The President of the Inns' Council¹ must designate a judge or judges (the 'directions judge') to exercise the following powers and functions².

Not less than ten days and not more than four weeks (or three weeks if the Complaints Committee³ has directed that prosecution of charges be expedited) after service of the charge or charges, the directions judge must hold a preliminary hearing for the purpose of giving directions and of taking such other steps as he considers suitable for the clarification of the issues before the tribunal and generally for the just and expeditious handling of the proceedings⁴. The directions to be given and steps to be taken by the directions judge may concern, but are not limited to, the following matters:

- 1827 (1) whether the hearing should not be held in public⁵;
- 1828 (2) applications for separate hearings⁶;
- 1829 (3) applications to sever charges⁷;
- 1830 (4) applications to strike out charges⁸;
- 1831 (5) attendance of witnesses⁹;
- 1832 (6) a requirement that the parties provide each other with the names of all witnesses to be called at the hearing within a specified time limit¹⁰;
- 1833 (7) admission of documents¹¹;
- 1834 (8) admission of facts¹²;
- 1835 (9) the estimated duration of the substantive hearing¹³;
- 1836 (10) such other matters as he deems expedient for the efficient conduct of the hearing¹⁴;
- 1837 (11) consideration of any application for a new hearing before a fresh tribunal¹⁵;
- 1838 (12) a requirement that such action as appears to him to be necessary for a fair hearing of the matter be undertaken within such period as he may decide¹⁶; and
- 1839 (13) where he is satisfied that the matter is ready for hearing by a tribunal, setting a date for the tribunal hearing¹⁷.

The Committee official and the defendant or his representative may, in advance of the date fixed for the preliminary hearing, agree upon the directions to be made and/or the steps to be taken there, or that no such directions or steps are required, and must notify the clerk in writing of any such agreement; and following such notification, the directions judge may, if he thinks fit, make directions in the terms agreed or direct that no preliminary hearing is required or both¹⁸.

The clerk must take a note of the proceedings at a preliminary hearing and must cause a record to be drawn up and served¹⁹ on the parties setting out the directions given or admissions made at the preliminary hearing, including, without prejudice to the generality of the directions given, a record of any directions which relate to any of the matters mentioned in heads (1) to (13) above²⁰.

A defendant aggrieved by a direction given or other step taken may, provided that he acts promptly following the service on him of the record of any directions, give notice to the clerk of his intention to apply for a review of such direction or step; and such review will be conducted

by the chairman of the disciplinary tribunal sitting with a lay representative²¹, who must, on the application being made, give such direction or take such other steps as they see fit²².

The defendant may plead guilty to any charge or charges at the directions hearing, in which case the disciplinary tribunal must find the defendant guilty of that charge at the tribunal hearing²³.

1 As to the delegation of the President's duties and functions see PARA 1270 note 3.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(1). These powers and functions may be exercised by a judge nominated by the President other than the directions judge, including the judge designated in the convening order (see PARA 1272) as chairman of the tribunal appointed to hear and determine the charge or charges against the defendant: Annexe K (The Disciplinary Tribunals Regulations) reg 9(7). As to the Code of Conduct see PARA 1150.

3 As to the Complaints Committee see PARA 1251.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(2), (3). For the avoidance of doubt, the directions judge, or the chairman of the disciplinary tribunal designated in the convening order, or failing the directions judge or the chairman, any other judge nominated by the President, may: (1) upon the application of either party, at any time extend or abridge any time limit governing the disciplinary procedures on such terms as he thinks just (Annexe K (The Disciplinary Tribunals Regulations) reg 9(11)(a)); (2) upon the application of either party, or of his own motion, hold further preliminary hearings for the purpose of giving any further directions or taking any other steps which he considers necessary for the proper conduct of the proceedings (Annexe K (The Disciplinary Tribunals Regulations) reg 9(11)(b)); (3) adjourn the preliminary hearing from time to time as he considers appropriate and set such time limits as he may decide for action to be taken during such adjournments (Annexe K (The Disciplinary Tribunals Regulations) reg 9(11)(c)); and (4) consider applications for adjournment of the tribunal hearing prior to that hearing and grant such adjournments as he considers appropriate (Annexe K (The Disciplinary Tribunals Regulations) reg 9(11)(d)).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(a). See further PARA 1276.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(b).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(c).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(d).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(e).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(f).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(g). This includes any documents intended to be relied upon by the Complaints Committee official in relation to charges of inadequate professional service: Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(g). As to officials of the Complaints Committee see PARA 1270 note 1. As to what constitutes inadequate professional service see PARA 1248; definition applied by Annexe K (The Disciplinary Tribunals Regulations) reg 1(c).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(h). If he thinks fit, the directions judge may request the defendant or his representative to state, either forthwith or in writing within such time as may be specified, whether any, and if so which, of the facts relied on in support of the charges as may be specified is disputed, and on which grounds; and the clerk must cause a record to be made of the making of such a request, and of the defendant's response, which must be drawn to the attention of the disciplinary tribunal at the conclusion of the substantive hearing, if relevant, on the question of costs: Annexe K (The Disciplinary Tribunals Regulations) reg 9(6). As to costs see PARA 1280.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(i).

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(j).

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(k). As to such applications see Annexe K (The Disciplinary Tribunals Regulations) reg 21(13); and PARA 1278.

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(l).

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(4)(m).

18 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(10).

19 As to service of documents see PARA 1271.

20 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(8).

21 As to the meaning of 'lay representative' see PARA 1270 note 7.

22 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(9).

23 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(5). As to the procedure at the tribunal hearing see PARA 1276.

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/E. PROCEEDINGS BEFORE DISCIPLINARY TRIBUNALS/1275. Provision of documents.

1275. Provision of documents.

Prior to the commencement of the substantive hearing, each member of the disciplinary tribunal must be provided with copies of the following documents:

- 1840 (1) the order of the President of the Inns' Council constituting the tribunal¹;
- 1841 (2) the charges and any particulars thereof²;
- 1842 (3) any documents proposed to be relied on by the official of the Complaints Committee³ or by the defendant, unless a direction has been made at the preliminary hearing⁴ or otherwise that copies of such documents be withheld⁵;
- 1843 (4) any written answer to the charges submitted by or on behalf of the defendant⁶;
- 1844 (5) such other documents, which may include copies of witness statements, as at the preliminary hearing or otherwise have been directed to be, or the Committee official and the defendant or his representative have agreed should be, laid before the tribunal prior to the start of the hearing⁷; and
- 1845 (6) the record of directions given at each preliminary hearing which has been drawn up and served⁸ on the parties⁹.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 10(a). As to the Code of Conduct see PARA 1150. As to the order constituting the tribunal see PARA 1272.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 10(b).

3 As to officials of the Complaints Committee see PARA 1270 note 1.

4 As to the preliminary hearing see PARA 1274.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 10(c).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 10(d).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 10(e).

8 Ie pursuant to Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 9(8): see PARA 1274.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 10(f).

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/E. PROCEEDINGS BEFORE DISCIPLINARY TRIBUNALS/1276. Procedure at the hearing.

1276. Procedure at the hearing.

The procedure of a disciplinary tribunal¹ is governed by the rules of natural justice, subject to which the tribunal may:

- 1846 (1) admit any evidence, whether oral or written, whether direct or hearsay, and whether or not the same would be admissible in a court of law²;
- 1847 (2) give all such directions with regard to the conduct of, and procedure at, the hearing, and with regard to the admission of evidence, as it considers appropriate for securing that the defendant has a proper opportunity of answering the charge or otherwise as is just³; and
- 1848 (3) exclude any hearsay evidence if it is not satisfied that reasonable steps have been taken to obtain direct evidence of the facts sought to be proved by the hearsay evidence⁴.

Special rules of evidence apply in proceedings before a disciplinary tribunal which involve the decision of a court or tribunal⁵. The tribunal must apply the criminal standard of proof when adjudicating upon charges of professional misconduct⁶, and the civil standard of proof when adjudicating upon charges of inadequate professional service⁷, if any⁸.

The hearing before a disciplinary tribunal must be in public unless at a preliminary hearing or otherwise it has been directed that it should not be⁹ and this direction has not been overruled by the tribunal¹⁰. The clerk must arrange for a record of the proceedings before a tribunal to be made by the employment of a shorthand writer or the use of a recording machine¹¹.

If a tribunal is satisfied that the relevant procedure¹² has been complied with and the defendant has been served with the prescribed documents¹³, and the defendant has not attended the time and place appointed for the hearing, it may nevertheless proceed to hear and determine the charge or charges¹⁴. If a tribunal is satisfied that it has not been practicable to comply with the relevant procedure, it must hear and determine the charge or charges in the absence of the barrister charged¹⁵.

At any time before or during the hearing a tribunal may direct that the charge or charges be amended, provided that:

- 1849 (a) the tribunal is satisfied that the defendant will not by reason of such an amendment suffer any substantial prejudice in the conduct of his defence¹⁶;
- 1850 (b) the tribunal must, if so requested by the defendant, adjourn for such time as is reasonably necessary to enable him to meet the charge or charges as so amended¹⁷; and
- 1851 (c) the tribunal must make such order as to the costs¹⁸ of, or occasioned by, the amendment, or of any consequential adjournment of the proceedings, as it considers appropriate¹⁹.

The tribunal must sit from day to day until it has arrived at a finding and, if any charge has been found proved, until sentence is pronounced²⁰. If it appears to the tribunal that an

adjournment is desirable for any reason, it may, however, be adjourned for such period as the tribunal thinks fit²¹.

1 As to the appointment and composition of disciplinary tribunals see PARA 1270.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 11(a). As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 11(b).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 11(c).

5 In proceedings before a disciplinary tribunal which involve the decision of a court or tribunal, the following rules of evidence apply provided that it is proved in each case that the decision relates to the barrister charged: (1) the fact that the barrister charged has been convicted of a criminal offence may be proved by producing a certified copy of the certificate of conviction relating to the offence, proof of a conviction in this matter constituting prima facie evidence that the barrister was guilty of the offence (Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 13(1)(a)); (2) the finding and sentence of any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the finding and sentence (Annexe K (The Disciplinary Tribunals Regulations) reg 13(1)(b)); and (3) the judgment of any civil court may be proved by producing a certified copy of the judgment (Annexe K (The Disciplinary Tribunals Regulations) reg 13(1)(c)). In any such case, the findings of fact by the court or tribunal upon which the conviction, finding, sentence or judgment is based are admissible as prima facie proof of the facts: Annexe K (The Disciplinary Tribunals Regulations) reg 13(2).

6 As to what constitutes professional misconduct see PARA 1247; definition applied by Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 1(c).

7 As to what constitutes inadequate professional service see PARA 1248; definition applied by Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 1(c).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 11.

9 See PARA 1274.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 12.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 15.

12 As to the meaning of 'relevant procedure' see PARA 1270 note 17.

13 I.e. the documents required by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 5, 7, 8 (see PARAS 1271-1273). As to service see Annexe K (The Disciplinary Tribunals Regulations) reg 30; and PARA 1271.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 14(1). This is subject to compliance with Annexe K (The Disciplinary Tribunals Regulations) reg 21(13)(i) (see PARA 1278) in the event of any charge being found proved.

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 14(2). This is subject to compliance with Annexe K (The Disciplinary Tribunals Regulations) reg 21(13)(ii) (see PARA 1278) in the event of any charge being found proved.

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 16(a).

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 16(b).

18 As to costs see PARA 1280.

19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 16(c).

20 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 17(1). As to the finding see PARA 1277; and as to sentence see PARA 1278.

21 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 17(2). In particular, if a finding of inadequate professional service is made and the tribunal considers that an award of compensation to the complainant may be appropriate, it may adjourn to enable further investigation of that question to take place, if it does not already have the necessary material before it: Annexe K (The Disciplinary Tribunals Regulations) reg 17(2).

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/E. PROCEEDINGS BEFORE DISCIPLINARY TRIBUNALS/1277. Finding.

1277. Finding.

At the conclusion of the hearing¹, the finding of the disciplinary tribunal on each charge, together with its reasons, must be set down in writing and signed by the chairman and all members of the tribunal². If the members of the tribunal are not unanimous as to the finding on any charge, the finding to be recorded is that of the majority; and if the members of the tribunal are equally divided, then, the burden of proof being on the official of the Complaints Committee³, the finding to be recorded is that which is the most favourable to the defendant⁴. The chairman of the tribunal must then announce the tribunal's finding on the charge or charges⁵.

1 As to the hearing see PARA 1276.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 18. As to the Code of Conduct see PARA 1150.

3 As to officials of the Complaints Committee see PARA 1271 note 1.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 18.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 18.

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/E. PROCEEDINGS BEFORE DISCIPLINARY TRIBUNALS/1278. Sentence and subsequent actions.

1278. Sentence and subsequent actions.

If a disciplinary tribunal¹ finds a charge or any charges proved, evidence may be given of any previous finding of professional misconduct², breach of proper professional standards or inadequate professional services³ or any finding on a charge consisting of a legal aid complaint⁴ against the defendant⁵. After hearing any representations by or on behalf of the defendant, the tribunal must set down in writing its decision as to the sentence⁶. If the members of the tribunal are not unanimous, the sentence to be recorded⁷ is that decided by the majority; and, if the members of the tribunal are equally divided, the sentence to be recorded is that which is the most favourable to the defendant⁸. The chairman of the tribunal must then announce the tribunal's decision as to the sentence⁹.

A barrister against whom a charge of professional misconduct has been found proved may be sentenced by the tribunal to be disbarred¹⁰; may be suspended for a prescribed period¹¹; may be prohibited from accepting or carrying out any public access instructions¹²; may be ordered to pay a fine of up to £5,000¹³; may be ordered to repay or to forgo fees¹⁴; may be ordered to complete continuing professional development of such nature and duration as the tribunal directs¹⁵; may be reprimanded by the Treasurer of his Inn¹⁶; may be reprimanded by the tribunal¹⁷; may be given advice by the tribunal as to his future conduct¹⁸; may be ordered by the tribunal to attend on a nominated person to be reprimanded¹⁹; or may be ordered by the tribunal to attend on a nominated person to be given advice as to his future conduct²⁰.

A barrister against whom a charge of inadequate professional service has been found proved may be directed to make a formal apology to the complainant for the conduct in relation to which the finding was made²¹, to repay or remit all or part of any fee rendered in respect of the inadequate service²², to pay compensation to the complainant in such sum as the tribunal directs not exceeding £5,000²³, or to complete continuing professional development of such nature and duration as the tribunal directs²⁴; or may be prohibited from accepting or carrying out any public access instructions²⁵.

The tribunal is also empowered to decide that no action should be taken against the barrister²⁶, to order the reduction or cancellation of fees paid by the Legal Services Commission in connection with services provided by the barrister as part of the Community Legal Service or Criminal Defence Service²⁷, or to order that the barrister be excluded from providing representation so funded²⁸. Whether or not the tribunal has found any charge proved, it may notify the barrister's Inn if it considers that the circumstances of the complaint are relevant to his capacity as a pupil supervisor²⁹. Provision is also made for the reporting and publication of the finding and sentence and the taking of further action by the defendant's Inn or (in the case of a registered European lawyer) the Bar Standards Board³⁰. There is a right of appeal³¹.

1 As to the appointment and composition of disciplinary tribunals see PARA 1270.

2 As to what constitutes professional misconduct see PARA 1247; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 1(c). As to the Code of Conduct see PARA 1150.

3 As to what constitutes inadequate professional service see PARA 1248; definition applied by Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 1(c).

4 As to legal aid complaints see PARA 1240 note 9.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(1).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(1).

7 For the prescribed form of wording of the sentence to be recorded see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 21. If the barrister charged has not been present throughout the proceedings, the sentence must include one of the following two statements: (1) if the relevant procedure under Annexe K (The Disciplinary Tribunals Regulations) reg 14(1) (see PARA 1276) has been complied with, that the finding and sentence were made in the absence of the barrister in accordance therewith (Annexe K (The Disciplinary Tribunals Regulations) reg 21(13)(i)); and (2) if the procedure under Annexe K (The Disciplinary Tribunals Regulations) reg 14(2) (see PARA 1276) has been complied with, that the finding and sentence were made in the absence of the barrister and that he has the right to apply to the directions judge for an order that there should be a new hearing before a fresh disciplinary tribunal (Annexe K (The Disciplinary Tribunals Regulations) reg 21(13)(ii)). As to the meaning of 'relevant procedure' see PARA 1270 note 17.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(1).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(1).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(i), 21(1). In the case of a registered European lawyer (see PARA 1102), this would involve removal from the register of European lawyers: Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(i), 21(14). If a barrister is a member of more than one Inn, each Inn of which he is a member must be mentioned in the sentence: Annexe K (The Disciplinary Tribunals Regulations) reg 21(12). See further PARAS 1279, 1292.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(ii), 21(2). In the case of a registered European lawyer, this would involve suspension from the register: Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(ii), 21(15). Suspension may be either unconditional or subject to conditions: Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(a)(ii). Any sentence of suspension may apply to the whole of a barrister's practice or to such part only as the tribunal may determine; and the conditions to which a sentence of suspension may be made subject include a requirement that the barrister must undergo such further pupillage or training or attain such standard of competence as the tribunal may determine: Annexe K (The Disciplinary Tribunals Regulations) reg 20(1). See further PARAS 1279, 1292.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(iii), 21(3). Prohibition may be either unconditional or subject to conditions and may be either indefinite or for a prescribed period: Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(a)(iii). As to public access see PARA 1176. See further PARAS 1279, 1292.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(iv), 21(4).

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(v), 21(5).

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(vi), 21(6). As to continuing professional development see PARA 1154. A defendant will be required to provide satisfactory proof of compliance with this order to the Complaints Committee: Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(a)(vi). As to the Complaints Committee see PARA 1251.

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(vii), 21(7).

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(viii), 21(7).

18 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(ix), 21(8).

- 19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(x), 21(7).
- 20 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(xi), 21(8).
- 21 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(b)(i).
- 22 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(b)(ii), 21(5).
- 23 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(b)(iii). In determining whether any sum is to be paid under this provision, or in fixing the amount of such sum, the tribunal must have regard in particular to any loss suffered by the applicant as a result of the inadequate professional service, the availability to the complainant of other forms of redress, the gravity of the conduct complained of, and the fee claimed by the barrister for the inadequate service: Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(b).
- 24 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(b)(iv), 21(6). The defendant may be required to provide satisfactory proof of compliance with this order to the Committee: Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(b)(iv).
- 25 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(b)(v), 21(3). Prohibition may be either unconditional or subject to conditions and may be either indefinite or for a prescribed period: Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(b)(v).
- 26 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(2)(c).
- 27 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(3)(i), 21(9), (10). As to the meaning of 'Legal Services Commission' see PARA 1161 note 18. As to the payment of fees by the Legal Services Commission in connection with services provided as part of the Community Legal Service or Criminal Defence Service see the Administration of Justice Act 1985 s 41(2); and PARA 1253. As to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq.
- 28 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(3)(ii), 21(11).
- 29 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 19(4). As to pupil supervisors see PARAS 1082-1087.
- 30 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 22, 25-27.
- 31 See PARA 1284.

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/E. PROCEEDINGS BEFORE DISCIPLINARY TRIBUNALS/1279. Disbarment, suspension, and prohibition from accepting public access instructions.

1279. Disbarment, suspension, and prohibition from accepting public access instructions.

Where a barrister has been sentenced by a disciplinary tribunal¹ to be disbarred², suspended³, or prohibited from accepting or carrying out any public access instructions⁴ for a period of more than one year, the tribunal must either require the Bar Standards Board⁵ to suspend immediately the practising certificate⁶ of the barrister in question⁷ or determine that its sentence prohibiting the barrister from accepting or carrying out any public access instructions is to take effect immediately⁸; and where a barrister who does not currently hold a practising certificate has been sentenced to be disbarred or to be suspended, the tribunal may require the Board not to issue any practising certificate to him⁹. Except in the case of the disbarment or suspension of a barrister who does not currently hold a practising certificate, the tribunal is obliged to impose such a requirement or make such a determination unless in the circumstances of the case it appears to the tribunal to be inappropriate to do so¹⁰, although if under these circumstances the barrister is permitted to continue to practise for any period the tribunal may require the Board to impose such terms in respect of the barrister's practice as it deems necessary for the protection of the public¹¹. A tribunal that concludes that it would be inappropriate to require immediate suspension may nonetheless require the Board to suspend the practising certificate of the barrister in question from such date as the tribunal may specify¹². In all cases of disbarment, suspension, or prohibition from accepting or carrying out public access instructions, the tribunal may take such action only after seeking and hearing representations from the defendant and an official of the Complaints Committee¹³ as to whether it would be inappropriate to take it¹⁴. Any requirement imposed pursuant to these provisions may be varied or set aside where appropriate¹⁵.

1 As to the appointment and composition of disciplinary tribunals see PARA 1270.

2 I.e. under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(i), 21(1): see PARA 1278. As to the Code of Conduct see PARA 1150.

3 I.e. under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(ii), 21(2): see PARA 1278.

4 I.e. under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(iii), 21(3): see PARA 1278. As to public access see PARA 1176.

5 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 As to the requirement for practising certificates see PARA 1155.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(1), (3)(a)(i).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(3)(a)(ii).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(3)(b).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(3)(a).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(5).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(4).

13 As to officials of the Complaints Committee see PARA 1271 note 1.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(2), (3).

15 As to variation or setting aside of an order by the directions judge see PARA 1286; and as to variation of an order where the barrister's circumstances change see PARA 1292.

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/E. PROCEEDINGS BEFORE DISCIPLINARY TRIBUNALS/1280. Costs.

1280. Costs.

A disciplinary tribunal¹ has power to make such orders for costs, whether against or in favour of a defendant, as it thinks fit². Upon making such an order, a tribunal must either itself determine the amount of such costs or appoint a suitably qualified person to do so on its behalf³. Any costs ordered to be paid by or to a defendant must be paid to or by the Bar Standards Board⁴. Subject to the provisions described above, all costs and expenses incurred by a tribunal or by the Complaints Committee⁵ in connection with or preparatory to the hearing before the tribunal must be borne by the Bar Standards Board⁶.

1 As to the appointment and composition of disciplinary tribunals see PARA 1270.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 29(1). As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 29(2).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 29(3). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

5 As to the Complaints Committee see PARA 1251.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 29(4).

UPDATE

1269-1280 Proceedings before disciplinary tribunals

Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexes J and K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/F. APPEALS/(A) Appeals from Written Warnings and Financial Penalties/1281. Right to appeal.

F. APPEALS

(A) APPEALS FROM WRITTEN WARNINGS AND FINANCIAL PENALTIES

1281. Right to appeal.

A barrister's appeal¹ from a written warning or financial penalty imposed by the Bar Standards Board² for any failure to comply with the relevant provisions of the Code of Conduct³ lies to an appeal panel consisting of a Queen's Counsel (who acts as the chair of the panel), a barrister and two lay representatives⁴.

An appeal is made by the barrister sending to the Secretary of the Complaints Committee, within 28 days of receipt of the written warning or notice seeking payment⁵, a notice identifying the warning or financial penalty appealed against, the decision the barrister contends for, the grounds of such appeal and a statement of whether or not the barrister requires his appeal to be disposed of at an oral hearing⁶.

At least five working days before the time set for the appeal, the Secretary must provide each member of the panel and the barrister with a paginated bundle of the correspondence and other documents on its files relating to the imposition of the written warning and financial penalty⁷. The barrister may be represented at the appeal⁸. The appeal panel must decide whether to set aside the written warning or financial penalty or both, as appropriate⁹.

1 Ie an appeal in accordance with the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.3: Annexe J (The Complaints Rules) r 65. As to the Code of Conduct see PARA 1150.

2 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

3 Ie the provisions identified in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246): Annexe J (The Complaints Rules) r 65.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 65. As to Queen's Counsel see PARAS 1039, 1124. As to the meaning of 'lay representative' see PARA 1259 note 4.

5 Ie the time limit specified in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.3 (see PARA 1246): Annexe J (The Complaints Rules) r 66. As to the Complaints Committee see PARA 1251.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.3: Annexe J (The Complaints Rules) r 66. The barrister's notice must be accompanied by the sum of £100 payable to the Board to defray expenses: Annexe J (The Complaints Rules) r 67. If the appeal panel allows the appeal in whole or in part, it may direct that this sum be refunded (but the panel has no power to award costs): Annexe J (The Complaints Rules) r 69(c).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 68.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 69(a).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 69(b). See also note 6.

UPDATE

1281 Right to appeal

TEXT AND NOTES--Code of Conduct of the Bar of England and Wales (8th Edn, 2004)
Annexe J substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/F. APPEALS/(B) Appeals against Findings of Adjudication Panels/1282. Right to appeal.

(B) APPEALS AGAINST FINDINGS OF ADJUDICATION PANELS

1282. Right to appeal.

A barrister in respect of whom an adjudication panel¹ has made a finding that he has provided inadequate professional service² may appeal against the finding and against any decision as to the remedy to be granted to the complainant in respect of such inadequate service³. Any such appeal must be made by the barrister sending to the Secretary of the Complaints Committee⁴, within 28 days of the date of the letter notifying him of the decision appealed against, a notice stating the findings to be appealed against, the decision the barrister contends for, and the grounds of such appeal, accompanied by the sum of £100 payable to the Bar Standards Board⁵ to defray expenses⁶. Service of notice of appeal operates as a stay of any order made in favour of the complainant⁷. On receipt of such a notice, the Secretary must notify the Chairman of the Complaints Committee of the intended appeal and afford him an opportunity to respond to the grounds of appeal stated in the notice⁸.

1 As to the referral of complaints to adjudication panels see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe J (The Complaints Rules) r 36(e); and PARA 1256. As to the constitution and powers of adjudication panels see PARA 1262. As to the Code of Conduct see PARA 1150.

2 As to what constitutes inadequate professional service see PARA 1248; definition applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 23(a). As to the determinations of an adjudication panel see PARA 1264.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 16. As to the remedies which an adjudication panel may grant see PARA 1264.

4 As to the Complaints Committee see PARA 1251.

5 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 18. As to Bar Standards Board see PARA 1049.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 19.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 20. For the purpose of so responding, the Chairman may seek information or assistance from such persons and in such manner as he sees fit: Annexe P (Adjudication Panel and Appeals Rules) r 20.

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1283. Hearing and determination of appeals.

An appeal against a finding of, or a remedy granted by, an adjudication panel¹ is heard and determined by a panel appointed by the President of the Council of the Inns of Court² consisting of two barristers, of whom at least one must be a Queen's Counsel³ and must chair the panel, at least one must be a junior of more than five years' call, and two lay representatives⁴. None of the members of the panel may have been a member of the adjudication panel which made any finding appealed against⁵. The procedure on an appeal is informal, the details, including whether or not there should be an oral hearing in relation to the appeal, being at the discretion of the chairman of the panel⁶. The barrister, the complainant and the Chairman of the Complaints Committee may attend or be represented⁷.

The panel may not allow the appeal unless it is satisfied that the adjudication panel appealed from reached a wrong decision on any question of law, made a finding of fact which was against the weight of the evidence, or exercised any discretion granted to it on a wrong basis⁸. Subject to this, it may make such order, including any order which the adjudication panel appealed from had the power to make, as it thinks fit in relation to the complaint⁹. Whether or not it allows the appeal, the panel may refer any issue of policy which arises to the relevant committee of the Bar Standards Board¹⁰.

1 As to the bringing of appeals see PARA 1282.

2 As to the Council of the Inns of Court see PARA 1053 et seq.

3 As to Queen's Counsel see PARAS 1039, 1124.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 17. No person may be appointed to an appeal panel if he is a member of the Complaints Committee or of the Board or any of its other committees, or if he was a member of the Committee at any time when it considered the complaint being dealt with by the panel: Annexe P (Adjudication Panel and Appeals Rules) r 17(i). As to the meaning of 'lay representative' see PARA 1259 note 4; definition applied by Annexe P (Adjudication Panel and Appeals Rules) r 23(a). As to the Complaints Committee see PARA 1251; as to the Bar Standards Board see PARA 1049.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 17(ii).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 21(a).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 21(b).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 21(d). If the panel allows an appeal, in whole or in part, it may in its discretion direct the refund to the barrister of the sum deposited under Annexe P (Adjudication Panel and Appeals Rules) r 18 (see PARA 1282); Annexe P (Adjudication Panel and Appeals Rules) r 21(e).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 21(c). The panel may not, however, make any order in relation to the costs of the appeal: Annexe P (Adjudication Panel and Appeals Rules) r 21(c).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe P (Adjudication Panel and Appeals Rules) r 21(f). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in

practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

UPDATE

1283 Hearing and determination of appeals

TEXT AND NOTES 6-10--Code of Conduct of the Bar of England and Wales (8th Edn, 2004)
Annexe P r 21 amended on 1 June 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/F. APPEALS/(C) Appeals from Decisions of Summary Hearings and Disciplinary Tribunals/1284. Right to appeal.

(C) APPEALS FROM DECISIONS OF SUMMARY HEARINGS AND DISCIPLINARY TRIBUNALS

1284. Right to appeal.

In cases where one or more charges of professional misconduct¹ have been proved in a summary hearing² or before a disciplinary tribunal³, an appeal may be lodged with the Visitors in accordance with the Hearings Before the Visitors Rules⁴. The defendant may appeal against the decision⁵, the sentence⁶, or both, while the Bar Standards Board may appeal where a case has been dismissed by, or against the sentence handed down by, a disciplinary tribunal⁷. In cases where no professional misconduct has been proved, but one or more charges of inadequate professional service have been, an appeal lies at the instance of the barrister from any such finding, and against any decision as to the remedy to be granted to the complainant for such service, in the same manner as an appeal lies from a finding of an adjudication panel in respect of the same matters⁸.

In cases where no professional misconduct has been proved, but the barrister has been found to have infringed one or more provisions of the Code of Conduct⁹ an appeal lies against that finding at the instance of the barrister in the manner prescribed in the Complaints Rules¹⁰. In cases where no professional misconduct has been proved but one or more charges of inadequate professional service have been proved and the barrister has been found to have infringed one or more provisions of the Code of Conduct¹¹ and the barrister wishes to appeal against both the finding of inadequate professional service and the finding that he has infringed such a provision, the appeal lies to the adjudication appeal panel¹².

1 As to what constitutes professional misconduct see PARA 1247.

2 As to the findings of summary hearings see PARA 1268.

3 As to the decisions of disciplinary tribunals see PARA 1278.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 23(1), Annexe L (The Summary Procedure Rules) r 12(1). As to the Hearings Before the Visitors Rules see PARAS 1284-1291. All barristers are subject to these rules: para 903(d). Notice of appeal must be accompanied by the sum of £250 payable to the Board to defray expenses, such sum to be refunded in the discretion of the Visitors in the event of an appeal which is successful wholly or in part: Annexe K (The Disciplinary Tribunals Regulations) reg 24, Annexe L (The Summary Procedure Rules) r 12(1). Payment of this sum may be waived: see PARA 1287 note 4. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049). As to the Code of Conduct see PARA 1150. As to the Visitors' jurisdiction see *R v Her Majesty's Judges Sitting as Visitors to the Honourable Society of the Middle Temple, ex p Bullock* [1996] ELR 349. The Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1973); Cmnd 8969) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) applies to an appeal to the Visitors: see *Re P (a Barrister)* [2005] 1 WLR 3019.

5 I.e the finding of the summary hearing or the conviction by the disciplinary tribunal: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 23(1)(a), Annexe L (The Summary Procedure Rules) r 12(1). For these purposes, the finding of a summary hearing includes any finding of inadequate professional service: Annexe L (Summary Procedure Rules) r 12(1). As to what constitutes inadequate professional service see PARA 1248.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 23(1)(b), Annexe L (The Summary Procedure Rules) r 12(1). An appeal against a sentence of disbarment may contain an appeal against any of the requirements for disbarment: Annexe K (Disciplinary Tribunals Regulations) reg 23(7).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 23(1)(b), (2). An appeal against dismissal of a charge, or sentence brought by the Bar Standards Board requires the consent of the Chairman of the Bar Standards Board or the chairman of the Complaints Committee: Annexe K (The Disciplinary Tribunals Regulations) reg 23(1)(b), (2). Where the Board appeals against a dismissal such consent must be obtained within the period of seven days beginning with the date on which the order of the Disciplinary Tribunal was made, and in the event that such consent is not obtained within that period no such appeal may be permitted without permission of the Visitors: Annexe K (The Disciplinary Tribunals Regulations) reg 23(6). As to the Complaints Committee see PARA 1251.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 23(5), Annexe L (The Summary Procedure Rules) r 12(2). As to appeals against findings of adjudication panels see PARAS 1282-1283.

9 le a provision referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246): Annexe K (The Disciplinary Tribunals Regulations) reg 23(3), Annexe L (The Summary Procedure Rules) r 12(3).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 23(3), Annexe L (The Summary Procedure Rules) r 12(3). The relevant manner is prescribed in Annexe J (The Complaints Rules) rr 65-69: Annexe K (The Disciplinary Tribunals Regulations) reg 23(3), Annexe L (The Summary Procedure Rules) r 12(3).

11 le a provision referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 901.1 (see PARA 1246): Annexe K (The Disciplinary Tribunals Regulations) reg 23(4), Annexe L (The Summary Procedure Rules) r 12(4).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 23(4), Annexe L (The Summary Procedure Rules) r 12(4). As to adjudication appeals panels see PARAS 1282-1283.

UPDATE

1284 Right to appeal

TEXT AND NOTES--Code of Conduct of the Bar of England and Wales (8th Edn, 2004)
Annexe K substituted on 1 March 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(5) MISCONDUCT, COMPLAINTS AND DISCIPLINE/(iii) Disciplinary Procedures/F. APPEALS/(C) Appeals from Decisions of Summary Hearings and Disciplinary Tribunals/1285. Notice of intention to appeal.

1285. Notice of intention to appeal.

Written notice of intention to appeal must be served, within 21 days from the date on which the order of the disciplinary tribunal¹ or the finding of the summary hearing² was made³, on the clerk to the Visitors⁴. The notice of intention to appeal must specify the Inn of which the appellant or defendant (as the case may be) is a member⁵. When serving a notice of intention to appeal, an appellant other than the Bar Standards Board must also give notice of an address at which service is to be made on him⁶.

1 As to the decisions of disciplinary tribunals see PARA 1278.

2 As to the findings of summary hearings see PARA 1268.

3 Further time for the service of notice of intention to appeal may be allowed by the Lord Chief Justice or the directions judge: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 4(1). Provision as to the appointment, powers etc of the directions judge is made by Annexe M (The Hearings Before the Visitors Rules) r 5; see PARA 1286. As to the Code of Conduct see PARA 1150.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 4(1), (2). 'Visitors' means the panel nominated to hear the appeal pursuant to Annexe M (The Hearings Before the Visitors Rules) r 10 or, in the case of an appeal within r 10(4) or (5), the single judge nominated to hear the appeal: r 2(2).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 4(3).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 4(4). For detailed provision as to the service of documents see Annexe M (The Hearings Before the Visitors Rules) r 3, Schedule. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

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1286. Appointment and duties of the directions judge.

Upon service on him of a notice of appeal¹ (whether or not served in time), the Lord Chief Justice must nominate a single judge of the High Court or the Court of Appeal (the 'directions judge'), who is not a bencher of the appellant's or defendant's (as the case may be) Inn², who:

- 1852 (1) may hold a hearing in order to determine how (if at all) he should exercise any of the functions conferred on him (the 'directions functions')³;
- 1853 (2) must consider the course of any appeal in relation to which he is appointed, and may at any time give such directions and take such steps as appear to him to be necessary or desirable for the purpose of securing the just, expeditious and economical disposal of the appeal⁴;
- 1854 (3) must, in the case of any appeal by the Bar Standards Board⁵ against the acquittal of the defendant, hold a directions hearing no later than 21 days after service of the notice of appeal⁶ and on that occasion he must determine whether the notice of appeal discloses a seriously arguable case that the disciplinary tribunal made an error of law which was material to its decision⁷;
- 1855 (4) may give directions and take steps relating (but not limited) to the anticipated duration of the hearing, the variation of any timetable specified in the Hearings Before the Visitors Rules, further procedural steps that should be taken before the hearing, the failure by either party to comply with any timetable specified in those Rules or directed by the directions judge, the adjournment of the hearing; and where the sentence of the original tribunal has been pronounced, whether it should be stayed pending the outcome of the appeal⁸;
- 1856 (5) may, on application made by the appellant (which must be served on the Board at the time of making the application if the Board is not the appellant) and after giving the Board the opportunity to respond to the application, vary or set aside an order suspending or withholding the issue of the appellant's practising certificate⁹;
- 1857 (6) may take steps in response to a party's failure to comply with any obligation imposed by, or timetable specified in, the Hearings Before the Visitors Rules, or directed by the directions judge in the exercise of his functions¹⁰; and
- 1858 (7) may direct that the sum required by the Disciplinary Tribunals Regulations or by the Summary Procedure Rules to defray the expenses of the appeal¹¹ is not payable¹².

There is no appeal against an order of the directions judge¹³.

¹ I.e a notice of appeal sent to the clerk to the Visitors under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) rr 3(1), 4, Schedule: see PARA 1285. As to the Code of Conduct see PARA 1150.

² Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(1).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(2).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(3).

5 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 See PARA 1285.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(4). On such a directions hearing if the directions judge determines that it is seriously arguable that the disciplinary tribunal made an error of law which was material to its decision, he must give such directions and take such steps as appear to him to be necessary or desirable for the purpose of securing the just, expeditious and economical disposal of the appeal within a period not exceeding 28 days from the date of the directions hearing; and if the directions judge determines that it is not seriously arguable that the disciplinary tribunal made any error of law which was material to its decision, he must dismiss the appeal and make such order as to costs as he considers just: Annexe M (The Hearings Before the Visitors Rules) r 5(5). As to the Bar Standards Board see PARA 1049.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(6).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(7). An order suspending or withholding the issue of the appellant's practising certificate is made under Annexe K (The Disciplinary Tribunals Regulations) reg 28: see PARA 1279. As to applications for variation see PARA 1292. The variation or setting aside of any such order by the directions judge may be on such terms and subject to such conditions (if any) as he considers appropriate: Annexe M (The Hearings Before the Visitors Rules) r 5(7).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(8). The directions judge's powers in this regard include making a final order for compliance by the party in default, directing that that party may not serve a petition or answer, dismissing or striking out the petition or answer of that party, ordering that any further step that appears to him to be necessary or desirable in order to provide for a fair and expeditious hearing of the matter be undertaken within a specified period, and directing an expedited hearing where the party in default has been prohibited from serving an answer or the answer has been struck out: Annexe M (The Hearings Before the Visitors Rules) r 5(8)(a)-(e).

11 As to this sum see PARA 1284 note 4.

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 5(9). This power is exercisable if, on an application made by the appellant, the directions judge concludes that payment of the sum would cause undue hardship to the appellant: Annexe M (The Hearings Before the Visitors Rules) r 5(9).

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 6.

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1287. Service and answer of the petition.

Within 42 days (or, in the case of an appeal by the Bar Standards Board against the acquittal of the defendant, 21 days) from the date on which the order of the disciplinary tribunal¹ or the finding of the summary hearing² was made³, the appellant must serve a written petition of appeal⁴ on the Lord Chief Justice⁵; the Chairman of the Bar Standards Board (unless the Board is the appellant)⁶; the President of the Council of the Inns of Court⁷; the Treasurer of the Inn of which the appellant or defendant (as the case may be) is a member⁸; and if the Board is the appellant, the defendant⁹.

The petition must state whether the appeal is against the finding or sentence, or both¹⁰; and must contain particulars of:

- 1859 (1) the charges¹¹;
- 1860 (2) a summary of the facts on which the charges were based¹²;
- 1861 (3) the findings of the tribunal or hearing¹³;
- 1862 (4) the sentence¹⁴;
- 1863 (5) the grounds for appeal, including for each matter appealed against the specific evidence on each charge on which the appellant will place reliance¹⁵;
- 1864 (6) in the case of an appeal by the Board against an acquittal of the defendant on any charge, a concise statement of any errors of law which it is contended the disciplinary tribunal made and of why they were fundamental to its decision¹⁶;
- 1865 (7) the relief sought¹⁷; and
- 1866 (8) if the hearing is estimated to last longer than one day, an estimate of the time required for the hearing¹⁸.

If no petition is served within the specified period (or that period as extended), no further action may be taken in relation to the appeal unless the Lord Chief Justice directs otherwise¹⁹.

The Board or, if the Board is the appellant, the defendant may (or, if so directed by the directions judge, must) serve on the Lord Chief Justice an answer to the petition within the period of 28 days (or, in the case of an appeal by the Board against the acquittal of the defendant on any charge, 14 days) starting with the date on which the petition is served or such further time as may be allowed by the directions judge²⁰. The answer must follow the form of the petition and must state which points in the petition are accepted and which are rejected²¹.

1 As to the decisions of disciplinary tribunals see PARA 1278.

2 As to the findings of summary hearings see PARA 1268.

3 Further time for the service of the petition may be allowed by the Lord Chief Justice or the directions judge by the Lord Chief Justice or the directions judge: See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(1), (2), (4). As to the Code of Conduct see PARA 1150. As to the appointment, powers etc of the directions judge see Annexe M (The Hearings Before the Visitors Rules) r 5; and PARA 1286.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(1), (2). A petition of appeal may not be served unless any sum payable under the Disciplinary Tribunals Regulations or under the Summary Procedure Rules to defray the expenses of the appeal (see PARA 1284 note 4) has been paid to the Bar Council, although this requirement may be waived by the directions judge: Annexe M (The Hearings Before the Visitors Rules) r 7(6).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(3)(a). As to the Lord Chief Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 303; **COURTS** vol 10 (Reissue) PARA 515.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(3)(b). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(3)(c). As to the Council of the Inns of Court see PARA 1053 et seq.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(3)(d). As to the Inns of Court see PARAS 1050-1052.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(3)(e).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(1). In an appeal against sentence, the petition may also refer to any factors which it is contended make the sentence unduly severe or lenient in relation to the appellant's or the defendant's record and to sentences in other similar cases: Annexe M (The Hearings Before the Visitors Rules) r 8(3).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(a).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(b).

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(c), (e).

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(d).

15 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(f).

16 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(g).

17 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(h).

18 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 8(2)(i).

19 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 7(5).

20 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 11(1), (2). Where an answer is served, the person serving it must also serve forthwith a copy of that answer on the appellant: Annexe M (The Hearings Before the Visitors Rules) r 11(3).

21 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 11(4). In any answer it serves, the Bar Standards Board may refer to any factors which it is contended make the sentence unduly lenient in relation to the appellant's record or to sentences in other cases: Annexe M (The Hearings Before the Visitors Rules) r 11(5). If, in the view of the person serving an answer, the hearing is likely to last longer than one day, the answer must include an estimate of the time required for the hearing and the reasons for that estimation: Annexe M (The Hearings Before the Visitors Rules) r 11(6).

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1288. Service of transcripts and other documents.

At the same time as serving the petition¹, the appellant must serve on the Lord Chief Justice a specified number of copies of the transcript of the proceedings before the tribunal whose decision is being appealed or, where the tribunal in question was a panel appointed to hear a summary matter, the statement of findings and sentence². Not less than 14 days before the date set for the hearing of an appeal, a copy of every document intended to be produced at the hearing by any party must be served by that party on every other party, and copies must be served on the Lord Chief Justice³.

¹ As to the service of the petition see PARA 1287.

² Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 9(1). As to the Code of Conduct see PARA 1150. The number of copies required to be served is, generally, three: see Annexe M (The Hearings Before the Visitors Rules) r 9(4). If any transcript is not available when the petition is served, the copies of that transcript must be served on the Lord Chief Justice as soon as practicable thereafter: Annexe M (The Hearings Before the Visitors Rules) r 9(2). As to the Lord Chief Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 303; **COURTS** vol 10 (Reissue) PARA 515.

³ Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 9(3). As to the number of copies to be served see note 2.

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1289. Appointment of panel.

When a petition is served upon him¹ (whether or not served in time), the Lord Chief Justice must nominate the persons who are to hear the appeal². If the appeal is against a decision of a tribunal presided over by a judge of the High Court, it must be heard by a panel comprised of a judge of Court of Appeal³, a Queen's Counsel⁴, and a lay representative⁵. Any other appeal against a decision of a disciplinary tribunal must be heard by a panel comprised of a judge of the High Court, a barrister, and a lay representative⁶, although if the Lord Chief Justice or the directions judge⁷ directs that the appeal relates solely to a point of law and is appropriate to be heard by a judge sitting alone, it may be so heard⁸. Any other appeal must be heard by a judge of the High Court or the Court of Appeal⁹. No judge or barrister member of the panel may be a bencher of the appellant's or defendant's (as the case may be) Inn¹⁰. No person can be nominated to a panel if they are a member of the Complaints Committee (the 'Committee') or of the Bar Standards Board or any of its other committees or if they were a member of the Committee at any time when it was considering the matter being dealt with by the panel¹¹.

1 As to the service of the petition see PARA 1287.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(1). As to the Code of Conduct see PARA 1150. As to the Lord Chief Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 303; **COURTS** vol 10 (Reissue) PARA 515.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(2)(a).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(2)(b). As to Queen's Counsel see PARAS 1039, 1124.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(2)(c). As to the meaning of 'lay representative' see PARA 1259 note 4.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(3).

7 As to the directions judge see PARA 1286.

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(4).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(5).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(6).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 10(7). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

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1290. Hearing the appeal.

The time allocated for the hearing of an appeal is generally one day¹. The Visitors may give directions, either before or during the hearing, with regard to the conduct of, and procedure at, a hearing of an appeal they consider appropriate².

A hearing must be held in public unless either party has made an application that the hearing should not be in public and the public interest does not require that it be held in public³, and may proceed in the absence of an appellant (or defendant) (but not in the absence of a representative of the Bar Standards Board)⁴. No witness may be called at the hearing without the Visitors' consent⁵, and evidence that was not before the tribunal or panel⁶ whose decision is being appealed may be given at the hearing only in exceptional circumstances and with the Visitors' consent⁷. An appellant or defendant may only challenge before the Visitors a decision of a court of law on which the decision was based in exceptional circumstances and with the Visitors' consent⁸.

The proceedings of the Visitors continue to be valid notwithstanding that one or more of the members of the panel⁹ becomes unable to continue or is or becomes disqualified from continuing to act, if the remaining members of the panel include a judge (other than a retired judge) and a lay representative¹⁰.

A full shorthand record of the hearing must be made¹¹.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 12(1). As to the Code of Conduct see PARA 1150. The time allocated is one day unless it has been indicated either in the petition or answer that the time required for the hearing is likely to exceed one day (see PARA 1287): Annexe M (The Hearings Before the Visitors Rules) r 12(1). The appeal must be listed by the clerk to the Visitors for a hearing on the first available date after the expiry of a period of four weeks beginning with the date of service on the Lord Chief Justice of the answer (or, where no answer is served, beginning with the last date for service of the answer under Annexe M (The Hearings Before the Visitors Rules) r 11 (see PARA 1287)): Annexe M (The Hearings Before the Visitors Rules) r 12(2). As to the Lord Chief Justice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 303; **COURTS** vol 10 (Reissue) PARA 515. In any case of an appeal by the Board against the acquittal of the defendant on any charge, the appeal must be listed by the clerk to the Visitors for a hearing in accordance with the directions given by the directions judge under Annexe M (The Hearings Before the Visitors Rules) r 5(4) (see PARA 1286), or such other period as the directions judge may subsequently direct: Annexe M (The Hearings Before the Visitors Rules) r 12(3). As to the meaning of 'Visitors' see PARA 1285 note 4. As to the directions judge see PARA 1286. A notice of the hearing of the appeal must be served on the Board and on the appellant or defendant (as the case may be) at least 14 days before the date fixed for hearing of the appeal: Annexe M (The Hearings Before the Visitors Rules) r 12(4). As to the Bar Standards Board see PARA 1049.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(1), (2).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(3).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(4).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(5).

6 As to disciplinary tribunals see PARA 1269 et seq. As to summary hearings see PARAS 1266-1268.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(6).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(7).

9 As to the panel see PARA 1289.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(8). As to the meaning of 'lay representative' see PARA 1259 note 4.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 13(9). A transcription of the shorthand record must be provided upon request to either party to the hearing but at his own expense: Annexe M (The Hearings Before the Visitors Rules) r 13(10).

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1291. Pronouncement of findings.

The Visitors must pronounce their findings in a single decision and may do so in public or private¹. In general, the Visitors may allow an appeal in whole or in part, confirm or vary an order of the tribunal or panel² whose decision is being appealed, or order a rehearing on such terms as they may deem appropriate in the circumstances³. However, in any case of an appeal by the Bar Standards Board⁴ against the acquittal of the defendant on any charge, they may: (1) dismiss the appeal; (2) allow it wholly or in part and remit the matter for a re-hearing before either the same or a differently constituted disciplinary tribunal; or (3) allow it wholly or in part and, if they are of the opinion that it is unnecessary or undesirable to direct a re-hearing before either the same or a differently constituted disciplinary tribunal, issue a declaration, but only where this will have no consequences whatsoever for the defendant⁵. In any case they must give reasons for their decision⁶; and may order, in the event of an appeal which is successful wholly or in part, a refund to the appellant of any relevant sum⁷.

The Visitors may make such order for costs, which may include an order for payment of the cost of any transcript required for the purposes of the appeal, as they consider appropriate⁸. Visitors' decisions are susceptible to judicial review⁹.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 14(1), (2). As to the Code of Conduct see PARA 1150. The findings should normally be pronounced in public unless a party to the hearing requests otherwise and the public interest does not require that the findings be pronounced in public: Annexe M (The Hearings Before the Visitors Rules) r 14(2).

2 As to disciplinary tribunals see PARAS 1269 et seq. As to summary hearings see PARAS 1266-1268.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 14(3). As to the principles applied by the Visitors in determining appeals against sentence see *Re H (a barrister)* [1981] 3 All ER 205, [1981] 1 WLR 1257.

4 The Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules), refer to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 14(4). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 14(5).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 14(6).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe M (The Hearings Before the Visitors Rules) r 19.

9 See *R v Visitors to the Inns of Court, ex p Calder* [1994] QB 1, [1993] 2 All ER 876, CA, in which it was held that decisions of judges sitting as Visitors are susceptible to judicial review on the limited grounds that the Visitors had acted outside their jurisdiction, had abused their powers or had acted in breach of the rules of natural justice.

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G. APPLICATIONS FOR VARIATION

1292. Variation of requirements imposed by disciplinary tribunal.

Where, following disbarment¹, suspension², or prohibition from accepting or carrying out public access instructions³ a disciplinary tribunal⁴ has made a requirement relating to the holding or issuing of a barrister's practising certificate⁵ or imposing terms in respect of the barrister's continuing practice⁶, and the barrister considers that, due to a change in the circumstances, it would be appropriate for that requirement to be varied, he may apply in writing to the President of the Council of the Inns of Court for a variation to be made⁷. On receiving such an application the President must refer it to the Chairman and one of the lay representatives⁸ of the tribunal which originally imposed the requirement⁹, who may vary or confirm the requirement in relation to which the application has been made¹⁰.

1 Ie under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(i), 21(1): see PARA 1278. As to the Code of Conduct see PARA 1150.

2 Ie under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(ii), 21(2): see PARA 1278.

3 Ie under Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) regs 19(2)(a)(iii), 21(3): see PARA 1278. As to public access see PARA 1176.

4 As to disciplinary tribunals see PARAS 1269-1280.

5 As to the requirement for practising certificates see PARA 1155.

6 Ie under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(1)-(5): see PARA 1279.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(6). The application must also be sent by the applicant, on the day that it is made, to the Complaints Committee, which may make such representations as it thinks fit on that application to those to whom the application has been referred by the President (ie the Chairman and one of the lay representatives of the tribunal which originally imposed the requirement): Annexe K (The Disciplinary Tribunals Regulations) reg 28(8). As to the Complaints Committee see PARA 1251. As to the President see PARA 1055; and see also Annexe K (The Disciplinary Tribunals Regulations) reg 1(c).

8 As to the meaning of 'lay representative' see PARA 1270 note 7.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(7). See note 7.

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K (The Disciplinary Tribunals Regulations) reg 28(9).

UPDATE

1292 Variation of requirements imposed by disciplinary tribunal

TEXT AND NOTES--Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe K substituted on 1 March 2009.

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(6) TERMS OF WORK AND REMUNERATION

(i) Terms of Work

1293. Contractual capacity.

There is no longer any rule of law which prevents a barrister from entering into a contract for the provision of his services as a barrister¹; nor is there any rule of professional conduct which prohibits barristers from entering into contracts or restricts their right to do so. Where a self-employed barrister² is instructed by a solicitor, however, no contract is ordinarily made³, and the barrister relies for payment of his proper fees on the solicitor's obligation to pay the fees as a matter of professional conduct⁴.

1 The former rule whereby a barrister was incapable as a matter of law from entering into such a contract was abolished by the Courts and Legal Services Act 1990 s 61(1).

2 As to self-employed barristers see PARA 1036.

3 As to the terms of work on which barristers offer their services to solicitors see PARA 1294.

4 As to this obligation see PARA 1297.

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1294. Terms of work authorised by the Bar Council.

The terms of work on which barristers offer their services to solicitors¹ are laid down by the Bar Standards Board². A solicitor who sends a brief or instructions³ to a barrister is deemed to instruct the barrister on the standard terms of work⁴, which are non-contractual and therefore not legally enforceable⁵, unless and to the extent that the barrister and solicitor have agreed in writing to be contractually bound or have agreed to exclude or vary the standard terms⁶. There is also a set of contractual terms⁷, which are intended to apply in cases where a barrister is instructed by a solicitor and the barrister and solicitor have agreed in writing that the barrister's retainer is to be contractually binding⁸. The standard contractual terms do not apply, however, to publicly funded work⁹, or to work undertaken on a conditional fee basis¹⁰, or in so far as they are expressly varied or excluded by written agreement between the barrister and the solicitor¹¹.

In either case, the terms of work only apply once the barrister has accepted the brief or instructions¹². A barrister is not deemed to have accepted a brief or instructions that have been delivered to him until he has had a reasonable opportunity to peruse them and, in the case of a brief, to agree a fee with the solicitor¹³.

A barrister accepts a brief or instructions upon the understanding that he must and will comply with the Code of Conduct of the Bar, that he will deal with the instructions as soon as he reasonably can in the ordinary course of his work, and that he may return the brief or instructions in accordance with the Code of Conduct, and, if he does, will incur no liability to the solicitor as a result of so doing¹⁴. Other than this, the terms of work are principally concerned with arrangements with regard to fees, which vary according to whether or not there is a contractual relationship with the solicitor¹⁵.

1 As to the meaning of 'solicitor' see PARA 1063 note 14. For these purposes, 'solicitor', where the context admits, includes any solicitor liable for the fees: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(3); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(iii). As to the Code of Conduct see PARA 1150.

2 The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

3 As to the meanings of 'brief' and 'instructions' see PARA 1164 note 4 (definitions applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ii)).

4 The standard terms of work are contained in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988).

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) paras 25, 26.

6 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) recital para (2), para 27.

7 These are contained in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001).

8 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) recital para (2), para 1.

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 1(3). 'Publicly funded work' means cases funded and paid directly to the barrister by the Legal Services Commission, as part of the Community Legal Service or the Criminal Defence Service (see further PARA 1300; and as to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq; as to the Criminal Defence Service see **LEGAL AID** vol 65 (2008) PARA 120 et seq); Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(11); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ix).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 1(4). As to conditional fee agreements see further PARAS 953-954, 1309; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1830 et seq.

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 1(1).

12 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 3; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 4. As to the duty to accept instructions (the 'cab rank rule') see PARA 1180; and as to the circumstances in which a barrister may decline, or must decline, to accept instructions see PARAS 1182-1191.

13 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 4; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 5.

14 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 5; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 6. As to the circumstances in which instructions must or may be refused or returned see PARAS 1192-1199. Where for any reason time is of the essence, the solicitor must at the time when he delivers the brief or instructions, but separately from the brief or instructions themselves, inform the barrister of that fact and of the particular reason for urgency in order that the barrister may decide whether in those circumstances he can accept the brief or instructions: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 6(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 7. In addition, the brief or instructions must be clearly marked 'Urgent': Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 6(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 7. In the case of publicly funded work, the solicitor must at the time when he delivers the brief or instructions (or, if any relevant certificate is not then available to him, as soon as reasonably practicable thereafter) supply the barrister with copies of any relevant public funding certificates: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 6(2).

15 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) paras 8-15 or (where the barrister and solicitor have agreed in writing that the barrister's retainer is to be contractually binding) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) paras 9-13; and PARAS 1298-1306.

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1295. No obligation other than between solicitor and barrister.

Under the standard terms of work on which barristers offer their services to solicitors¹, neither the sending by a solicitor² of a brief or instructions³ to a barrister, nor the acceptance by the barrister of a brief or instructions, nor anything done in connection therewith, nor the arrangements relating thereto, nor the terms of work themselves, nor any agreement or transaction entered into or payment made by or under them, is attended by or gives rise to any contractual relationship, rights, duties or consequences whatsoever or is legally enforceable by or against, or may be the subject of litigation with, either the barrister or the Bar Standards Board⁴.

Under the standard contractual terms of work⁵, the same exclusion of any legal relationship applies as regards the Board though not as between the solicitor and barrister⁶.

1 The terms are contained in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988): see PARA 1294. As to the Code of Conduct see PARA 1150.

2 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

3 As to the meanings of 'brief' and 'instructions' see PARA 1164 note 4 (definitions applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ii)).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 26. The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

5 These terms are contained in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms on which Barristers Offer their Services to Solicitors 2001): see PARA 1294.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms on which Barristers Offer their Services to Solicitors 2001) para 16.

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(ii) Fees

A. RIGHT TO CHARGE AND RECOVER FEES

1296. Right to charge fees for work undertaken.

A self-employed barrister¹ may charge for any work undertaken by him, whether or not it involves an appearance in court², on any basis or by any method he thinks fit, provided that such basis or method is permitted by law³ and does not involve the payment of a wage or salary⁴. This right is subject, however, to the provisions of the Code of Conduct of the Bar concerned with maintaining a barrister's independence⁵.

1 As to self-employed barristers see PARA 1036.

2 As to the meaning of 'court' see PARA 1158 note 3.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 405(a). As to the Code of Conduct see PARA 1150. In relation to international work substantially performed outside England and Wales, these provisions apply on the basis that the applicable law is that of the place where the work is performed: Annexe A (The International Practice Rules) r 4(c). As to international work see PARA 1164.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 405(b). The exception arises where a barrister is employed by a legal advice centre; a barrister so employed may not in any circumstances receive either directly or indirectly any fee or reward for the supply of any legal services to any client of the centre other than a salary paid by the centre: para 807(a). A barrister so employed must also ensure that any fees in respect of legal services supplied by him to any client of the centre accrue and are paid to the centre (para 807(b)), and must not have any financial interest in the centre (para 807(c)). As to the meaning of 'legal advice centre' see PARA 1161 note 20. As to the meaning of 'legal services' see PARA 1152. As to payments that may be due when representation is given pro bono see the Legal Services Act 2007 s 194; and PARA 934.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 405. As to the relevant provisions see para 307; and PARA 1171.

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1297. Solicitors' liability for fees.

By established custom of the profession, a barrister looks for payment of his fees to the solicitor who instructs him and not to the lay client¹. In any case where a barrister accepts a brief or instructions² from a solicitor³ in his capacity as a director, partner, member, employee, consultant, associate or agent of a company, firm or other body⁴, the solicitor warrants that he is authorised by his company, firm or other body to instruct the barrister⁵, and the obligations of the solicitor under the terms of work⁶ (including in particular his responsibility for the payment of the barrister's fees) are the joint and several obligations of him and that company, firm or other body⁷.

Fees must be as agreed between the barrister and the solicitor before the barrister commences work under the brief or instructions⁸. In default of such agreement, the fees chargeable in any case must be a reasonable professional rate for the barrister instructed⁹. Unless a barrister and solicitor have agreed in advance that the barrister's retainer is to be contractually binding¹⁰, they may make such written agreement or arrangement between them as they think fit regarding the time or times, whether at the time of delivery of the brief or instructions or subsequently or otherwise, at which the barrister's fees are to be paid, and the solicitor must pay the barrister's fees accordingly¹¹.

In general, the jurisdiction which the court exercises over solicitors will not be used for the purpose of compelling a solicitor to pay counsel's fees even when the solicitor has received them from the lay client¹².

1 *Hobart v Butler* (1859) 9 ICLR 157; *Re Seal, ex p Crickett* (1893) 37 Sol Jo 685. When one solicitor acts as agent for another, the agent is responsible to counsel for his fees: *Re Nelson, Son and Hastings* (1885) 30 ChD 1 at 10. Historically it has been a matter of professional conduct for a solicitor to be personally liable for the payment of counsel's fees, however there is no such obligation under the current Solicitor's Code of Conduct: see *The Bar Handbook 2008* para 3.80.

2 As to the meanings of 'brief' and 'instructions' see PARA 1164 note 4 (definitions applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ii)). As to the Code of Conduct see PARA 1150.

3 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

4 A solicitor may, in his capacity as a director, partner, member, employee, consultant, associate or other agent of a company, firm or other body, brief or instruct a barrister: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 1; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 2.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 2(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 3(1).

6 As to the terms of work see PARA 1294.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 2(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 3(2).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(1)(i); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 9(1)(a).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(1)(ii); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 9(1)(b).

10 The Terms of Work under such agreements are governed by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) (see PARA 1294), which makes no provision corresponding to that made by Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 8 (see the text and note 11).

11 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 8. This is subject to any provision which may be made in connection with contingent fees (see PARA 1309); and different provisions apply in respect of publicly funded work (see PARA 1300) and where the solicitor is subject to a Withdrawal of Credit Direction (see PARAS 1307-1308): Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 8.

12 Although the jurisdiction has been used for this purpose (see *Re Farman* (1883) 18 L Jo 352; *Re A Solicitor, ex p Incorporated Law Society* (1894) 63 LJQB 397, DC; *Re A Solicitor, ex p Incorporated Law Society* (1901) Times, 5 November) the tendency was checked in 1909 (see *Re A Solicitor, ex p Incorporated Law Society* (1909) Times, 27, 28 January).

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1298. Right to agree payment in advance.

Under the standard terms of work on which barristers offer their services to solicitors¹, unless a barrister and solicitor² have agreed in advance that the barrister's retainer is to be contractually binding³, the barrister may require his fees to be agreed and paid before he accepts the brief or instructions⁴ to which the fees relate⁵; and, if the fees are payable by a solicitor who is subject to a Withdrawal of Credit Direction⁶, the barrister must require his fees to be so agreed and paid in advance⁷.

1 The terms are contained in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988): see PARA 1294. As to the Code of Conduct see PARA 1150.

2 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

3 The terms of work under such agreements are governed by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001), which makes no provision corresponding to that made by Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 9 (see the text and notes 4-7).

4 As to the meanings of 'brief' and 'instructions' see PARA 1164 note 4 (definitions applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ii)).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 9. Different provisions apply in respect of publicly funded work (see PARA 1300) and work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court (see PARA 1301): Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 9.

6 I.e a notified solicitor: see PARA 1307 note 3.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 9. Different provisions apply in respect of publicly funded work (see PARA 1300) and work the fees for which are to be paid out of a fund but cannot be so paid without an order of the court (see PARA 1301): Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 9.

The requirement that fees must be agreed and paid in advance where they are payable by a solicitor who is subject to a Withdrawal of Credit Direction can be waived with the appropriate written authorisation: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 9.

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1299. Submission of fee notes.

A barrister must submit an itemised fee note not later than three months after the work to which the fee note relates has been done or at the conclusion of the matter in which he has been briefed or instructed¹, whichever is the sooner². Every fee note must include the solicitor's reference and (where appropriate) the barrister's case reference number³, and unless the barrister and solicitor have agreed in advance that the barrister's retainer is to be contractually binding⁴, the barrister's relevant account number for the purpose of receiving payment in publicly funded cases and (if known to the barrister) any relevant public funding certificate number and date of issue⁵.

It is the duty of the head of chambers⁶ or any barrister who is responsible in whole or in part for the administration of chambers⁷ to take reasonable steps to ensure that fee notes in respect of all work undertaken by all members of chambers and pupils and (unless expressly agreed with the individual) former members and pupils of chambers are sent expeditiously to clients⁸ and, in the event of non-payment within a reasonable time, pursued efficiently⁹.

1 As to the meanings of 'brief' and 'instructions' see PARA 1164 note 4 (definitions applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ii)). As to the Code of Conduct see PARA 1150.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 10(1). A barrister must as soon as reasonably practicable comply with a request by a solicitor for a fee note: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(3); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 10(2). If any fees remain outstanding at the conclusion of a case, the solicitor must as soon as reasonably practicable inform the barrister that the case has concluded: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(5); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 10(4). Provision is made as to the persons to whom fee notes should be sent and the method of sending: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 22; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(2). As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(4); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 10(3).

4 The terms of work under such agreements are governed by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001), which makes no provision corresponding to that made by the second limb of Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(4) (see the text and note 5).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 10(4).

6 As to the meaning of 'chambers' see PARA 1153 note 5.

- 7 If there is no one to fulfil these roles, all the members of the chambers are responsible: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 404.1(c).
- 8 As to the meaning of 'client' see PARA 1161 note 16.
- 9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) paras 404.1(a), (b), 404.2(i).

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1300. Payment for publicly funded work.

In the case of publicly funded work¹, the solicitor² and barrister must both take such steps as it may be open to each of them to take for the purpose of obtaining payment of the barrister's fees as soon as reasonably practicable³. The solicitor must as soon as reasonably practicable comply with a request by the barrister for information by notifying him of the date of issue and number, and supplying him with copies of, any relevant public funding certificates, by notifying him of the date of any order for assessment of costs under the relevant certificate or other event giving rise to a right to such assessment, and by informing him of the steps taken by him pursuant to his duty to take steps for the purpose of obtaining payment of the barrister's fees⁴. The barrister must then, unless such information and an explanation for non-payment satisfactory to him is thereupon received from the solicitor, report the facts to the Chair of the Bar Standards Board⁵.

1 As to the meaning of 'publicly funded work' see PARA 1294 note 9.

2 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

3 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 11(1). As to the Code of Conduct see PARA 1150.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 11(2).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 11(3). Such a report may be made to any person to whom the Chair has delegated responsibility: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(9); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(viii). If a report is made in these circumstances, the Chair or other officer may write to the solicitors concerned reminding them of their obligations to pay counsel's fees and requesting an explanation for the non-payment (Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 16; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(1)), and may subsequently commence proceedings culminating in the withdrawal of the solicitor's credit (see PARAS 1307-1308). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

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1301. Payments requiring court orders.

Where fees for work are to be paid out of a fund but cannot be so paid without an order of the court, the barrister's fees are payable one month after the making of the order required for the payment of such fees out of the fund¹. The solicitor² must, however, use his best endeavours to obtain such order or orders as may be requisite to enable payment of the fees to be made as soon as reasonably practicable³, and must as soon as reasonably practicable comply with a request by the barrister for information by informing the barrister of the steps taken by him pursuant to this duty⁴; and if he fails to satisfy either of these obligations, the fees will be payable forthwith and the amount outstanding from time to time will carry simple interest at the stipulated rate⁵ from one month after the date of the reminder letter⁶ until payment⁷.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 12(4); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 11(4). As to the Code of Conduct see PARA 1150.

2 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 12(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 11(1).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 12(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 11(2). If information and an explanation for non-payment satisfactory to the barrister are not received, the barrister must report the facts to the Chair of the Bar Standards Board: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 12(3); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 11(3). Such a report may be made to any person to whom the Chair has delegated responsibility: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(9); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(viii). If a report is made in these circumstances, the Chair or other officer may write to the solicitors concerned reminding them of their obligations to pay counsel's fees and requesting an explanation for the non-payment (Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 16; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(1)), and may subsequently commence proceedings culminating in the withdrawal of the solicitor's credit (see PARAS 1307-1308). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

5 'Stipulated rate' means 2% above the Bank of England base rate from time to time: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(13); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(xi).

6 I.e. the letter referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(1) (see PARA 1304).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 12(5); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 11(5).

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1302. Standard payment procedure.

Unless the barrister and solicitor¹ have agreed in advance that the barrister's retainer is to be contractually binding², or have made a written agreement or arrangement between them regarding the time or times at which the barrister's fees are to be paid³, or the solicitor challenges the fees⁴, the barrister's fees must be paid by the solicitor within one month after the fee note relating to it has been sent to the solicitor⁵, whether or not the solicitor has been placed in funds by his client and whether or not the case is still continuing⁶. Fees not paid in full in accordance with these requirements carry simple interest at the stipulated rate⁷ from one month after the date of the reminder letter⁸ until payment, provided the letter includes a statement to that effect⁹.

1 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

2 The Terms of Work under such agreements are governed by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001), which makes no provision corresponding to that set out in the text and notes below. As to the Code of Conduct see PARA 1150.

3 Ie under the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 8 (see PARA 1297).

4 As to such challenges see PARA 1306.

5 As to the submission of fee notes see PARA 1299.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) paras 13(1), 14(4). These provisions apply only if and to the extent that the barrister's fees have not been previously paid: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 13(1).

7 As to the meaning of 'stipulated rate' see PARA 1301 note 5.

8 Ie the letter referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(1) (see PARA 1304).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 13(2).

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1303. Payment under contract for services.

If a barrister and solicitor¹ have agreed in advance that the barrister's retainer is to be contractually binding, the barrister's fees must, unless the solicitor is challenging the fee², be paid by the solicitor within one month after receipt by the solicitor of the barrister's fee note³ in respect of such fees⁴. Fees not paid in full in accordance with these requirements carry simple interest at the stipulated rate⁵ from one month after the date of the reminder letter⁶ until payment⁷.

1 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

2 As to such challenges see PARA 1306.

3 As to the submission of fee notes see PARA 1299. Provision is made as to the persons to whom fee notes should be addressed and the method of sending: see the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 22; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(2). As to the Code of Conduct see PARA 1150.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) paras 9(2), 12(4)(a). These provisions apply only if and to the extent that the fees are not payable out of a fund and cannot be so paid without a court order (see PARA 1301); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 9(2). It is not open to the solicitor to withhold or delay payment or any part of it on the grounds that a claim or complaint has been made or may be made against the barrister arising out of the brief or instruction to which the fees relate or any other ground: Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 12(4)(b). As to the meanings of 'brief' and 'instructions' see PARA 1164 note 4 (definitions applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ii)).

5 As to the meaning of 'stipulated rate' see PARA 1301 note 5.

6 I.e. the letter referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(1) (see PARA 1304).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 9(3).

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1304. Procedure for recovery of fees.

Where fees remain unpaid after the expiration of one month after the first fee note¹ has been sent, a barrister may send a reminder letter to the solicitor². He may send a further reminder if an explanation for non-payment satisfactory to the barrister has not been received at the expiration of three months after the sending of the first fee note³, and unless an explanation for non-payment satisfactory to the barrister is thereupon received, he must report the facts to the Chair of the Bar Standards Board⁴.

These provisions are subject to any written agreement or arrangement between the barrister and solicitor regarding the time or times at which the barrister's fees are to be paid⁵ and, if the barrister and solicitor have agreed in advance that the barrister's retainer is to be contractually binding, are without prejudice to any other remedy open to the barrister to recover the fees⁶.

1 As to the submission of fee notes see PARA 1299.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(1). As to the Code of Conduct see PARA 1150. As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1. The letter must be substantially in the form of the letter annexed to the terms of work and marked 'A', or some reasonable adaptation of it: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(1). Provision is made as to the persons to whom reminder letters should be addressed and the method of sending: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 22; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(2).

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(2). The letter must be substantially in the form of the letter annexed to the terms of work and marked 'B', or some reasonable adaptation of it: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(2). Provision is made as to the persons to whom reminder letters should be addressed and the method of sending: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 22; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(2).

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(3); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(3). Such a report may be made to any person to whom the Chair has delegated responsibility: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(9); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(viii). If a report is made in these circumstances, the Chair or other officer may write to the solicitors concerned reminding them of their obligations to pay counsel's fees and requesting an explanation for the non-payment (Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 16; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(1)), and may subsequently commence proceedings culminating in the withdrawal of the solicitor's credit (see PARAS 1307-1308). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15. As to such agreements see Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 8; and PARA 1297.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13.

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1305. Recovery of fees where there is no contractual relationship with client.

If there is no advance agreement between a barrister and a solicitor that the barrister's retainer is to be contractually binding¹, there is no contractual relationship between a barrister and either his instructing solicitor² or the lay client³ upon which a claim may be brought to recover fees⁴. A barrister is entitled to refuse to accept a brief if the fee is not paid on delivery; but, if he does not insist on the payment of the fee when the brief is delivered, he has no remedy in the event of subsequent non-payment⁵. In the absence of an explicit contractual agreement, even an express promise by the client to pay fees to a barrister, whether made before, during, or after litigation, has no binding effect, and the relation of barrister and client renders the parties incapable as a matter of law of making any legal contract of hiring and service concerning litigation⁶.

¹ For the right of a barrister and a solicitor to enter into a contractually binding agreement see PARAS 1293-1295.

² *Moor v Row* (1629) 1 Rep Ch 38; *Re May* (1858) 4 Jur NS 1169; *Re Le Brasseur and Oakley* [1896] 2 Ch 487 at 494, CA. See also *Wells v Wells* [1914] P 157, CA.

³ *Kennedy v Broun* (1863) 13 CBNS 677.

⁴ The remuneration of a barrister used to be classed as honorarium, rather than merces, which means that fees are said to be payable as a matter of honour only, and not as a matter of legal obligation. The honorarium doctrine was imported from classical Roman Law, which forbade advocates and professors of law from accepting hire for their services (Lex Cincia c 204 BC). The earliest known exposition of the doctrine in English law is found in Davies' Reports, Preface (1615). See also *Thornhill v Evans* (1742) 2 Atk 330 at 332; Co Litt 295a; 3 Bl Com 28; and see generally Baker 'Counsellors and Barristers: an Historical Study' (1969) 27 CLJ 205. In former times when barristers' fees were usually paid in advance, the *honorarium* doctrine prevented the client from recovering the fee for a failure of consideration, as, for instance, where the barrister, having accepted a brief in a case, failed to attend at the trial (see *Turner v Philipps* (1792) Peake 166).

The rule which prevents a barrister from suing for fees where he has not made a contractual agreement with his client is not confined to litigation, but extends to all work which falls within the ordinary scope of a barrister's practice: *Mostyn v Mostyn* (1870) 5 Ch App 457; and see also *R v Dautre* (1884) 9 App Cas 745, PC. The rule applies even when the solicitor has received funds from the client: *Re Sandiford (No 2)*, *Italo-Canadian Corp'n Ltd v Sandiford* [1935] Ch 681 (counsel has no right to prove for his fees in the administration of a deceased solicitor's insolvent estate, even where the solicitor, having falsely represented that he has paid the fees, has received the money from the lay client). Fees which have been received by a firm of solicitors but not paid over to counsel may not be attached or garnisheed as a debt: *Wells v Wells* [1914] P 157, CA.

⁵ See *Morris v Hunt* (1819) 1 Chit 544; *Re Angell*, *Angell v Oodeen* (1860) 29 LJCP 227; *Re Cockayne* (1884) 19 LJNC 500, CA; *Re Le Brasseur and Oakley* [1896] 2 Ch 487 at 494, CA; *Rondel v Worsley* [1969] 1 AC 191 at 236, 261, 278, 287, [1967] 3 All ER 993 at 1004, 1020, 1031, 1037, HL.

⁶ *Kennedy v Broun* (1863) 13 CBNS 677. The absence of a contractual relationship between a barrister and his client affects other attempted methods of remuneration. Thus if a client conveys property to counsel in consideration of counsel's services and of the client's promise to pay for them, the promise of the client to pay counsel is insufficient to support the deed as founded on contract (*Broun v Kennedy* (1863) 33 Beav 133; on appeal (1864) 4 De GJ & Sm 217), while a promise included by a barrister in a mortgage deed for the payment to him of extra interest for the purpose of recovering payment for past professional services to the mortgagor will not be enforced (*Thornhill v Evans* (1742) 2 Atk 330 at 332 per Lord Hardwicke LC). It also follows that, in such circumstances, a promise made by a solicitor to pay barristers' fees will not bind the client: see *Hobart v Butler* (1859) 9 ICLR 157; *Mostyn v Mostyn* (1870) 5 Ch App 457. A solicitor does have implied authority, however, to incur and pay barristers' fees; and provided such fees have been incurred within the scope of the solicitor's retainer, the fact that the client is not liable to the barrister for their amount does not prevent the

solicitor from recovering the money from the client, subject to assessment of his bill of costs: *Morris v Hunt* (1819) 1 Chit 544; *Hobart v Butler* at 166; *Medlicott v Emery* (1933) 149 LT 303. A solicitor has no right to recover counsel's fees from the client, however, until they have been paid: *Re Taxation of Costs, Re a Solicitor* [1936] 1 KB 523, [1936] 1 All ER 491, CA. The inability of barristers to sue for their fees in the absence of contractual arrangements does not disentitle a successful litigant to whom costs have been awarded from recovering barristers' fees, if allowed on assessment, from the other party: *Morris v Hunt*.

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1306. Challenges.

Any challenge by a solicitor¹ to a barrister's fee (whether giving rise to an issue of competence or a dispute on quantum or otherwise) must be made by the solicitor in writing within three months after the first fee note relating to that fee has been sent to him² or within one month after the reminder letter³ has been sent to him, whichever is the later⁴. No challenge will be accepted unless this requirement is complied with and the solicitor has, within 14 days of being requested to do so, agreed in writing to submit the issue or dispute giving rise to the challenge to the decision of an appropriately constituted tribunal⁵ and to abide by and forthwith give effect to that decision⁶.

The members of a tribunal to which a challenge is referred must act as experts and not as arbitrators, and the decision of the tribunal is conclusive, final and binding for all purposes upon the solicitor and the barrister⁷. No payment need be made in respect of the fees (unless the tribunal orders an interim payment) until the tribunal has made its decision and communicated it to the parties⁸.

If the tribunal determines that any sum is payable in respect of the fees, the standard non-payment provisions⁹ apply to that sum as if it had become payable when it would have become payable if no challenge had been made, and the tribunal must also determine the amount payable in respect of interest¹⁰.

1 As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1.

2 As to the submission of fee notes see PARA 1299.

3 I.e. the letter referred to in the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 15(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 13(1) (see PARA 1304). As to the Code of Conduct see PARA 1150.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 14(1); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 12(1).

5 See the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(8); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(vii).

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 14(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 12(2).

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 14(3)(i); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 12(3)(a).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 14(3)(ii); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 12(3)(b).

9 I.e. the provisions of the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 13(2) (see PARA 1302) or, where the barrister and solicitor have agreed in advance that the barrister's

retainer is to be contractually binding, the provisions of Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 9(3) (see PARA 1303).

10 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 14(3)(iii); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 12(3)(c).

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1307. Withdrawal of Credit Directions.

A Withdrawal of Credit Direction is a direction that no barrister may without the written consent of the Chair of the Bar Standards Board¹ knowingly accept instructions² from any person or firm named in such direction or from any person who or firm which is or has at any time since the direction was issued been a connected person³ unless his fees are to be paid directly by the Legal Services Commission⁴ or such instructions are accompanied by payment of an agreed fee for such work or unless he agrees in advance to accept no fee for such work⁵. The Chair may make such a direction if:

- 1867 (1) he has sent a letter to the person or firm in question concerning the non-payment of barristers' fees and has received no satisfactory explanation for the non-payment⁶;
- 1868 (2) any fees referred to in such a letter which are in the opinion of the Chair properly payable remain unpaid⁷ or, in the event that all such fees have been paid, not more than 12 months have elapsed since payment⁸; or
- 1869 (3) circumstances have arisen in which the Chair would otherwise have occasion to send to any person liable for the fees or to any connected person a further reminder letter⁹.

1 Consent may be sought urgently in exceptional cases, and may be granted by any person to whom the Chair has delegated responsibility: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(9); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(viii). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

2 As to the meaning of 'instructions' see PARA 1164 note 4 (definitions applied by the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(2); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(ii)).

3 'Connected person' means any person who from time to time is: (1) a partner, employee, consultant or associate of any firm of which any person liable for the fees or any notified solicitor is a partner, employee, consultant or associate; (2) the employer of any person liable for the fees or of any notified solicitor; (3) an employee of any person liable for the fees or of any notified solicitor; or (4) a firm of which any person liable for the fees or any notified solicitor is a partner, employee, consultant or associate: Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(6). As to the meaning of 'solicitor' see PARA 1063 note 14; and PARA 1294 note 1. As to the Code of Conduct see PARA 1150. 'Person liable for the fees' means any solicitor liable for the fees and any person, company, firm or other body responsible for the payment of the fees: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(4); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(iv). As to a solicitor's liability for fees see PARA 1297. 'Notified solicitor' means any person or firm whose name is for the time being included in the list of persons or firms subject to a Withdrawal of Credit Direction (ie referred to in Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) paras 17, 18) and any person who or firm which is or has at any time since the direction was issued been a connected person: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(7).

4 As to the meaning of 'Legal Services Commission' see PARA 1161 note 18.

5 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(2)(a); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(1). The names of the persons or firms named in such a direction are included in a list of persons and firms named in such directions to be circulated by pre-paid first-class post to all such persons and firms, all clerks and heads of chambers in England and Wales, the Master of the Rolls and the President of the Law Society: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(2)(b). The list must be circulated monthly unless there have been in the meantime no additions to or deletions from it: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 19.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(1)(a). A barrister may make a report to the Chairman concerning the non-payment of his fees generally (see PARA 1304), the non-payment of fees which are to be paid out of a fund but which cannot be paid without a court order (see PARA 1301), the non-payment of fees for publicly funded work (see PARA 1300), and the non-payment of fees under the equivalent terms of any contract: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 16; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(1). If a barrister makes such a report, and in any other case in which he is satisfied that it is appropriate to do so, the Chairman may write to the solicitors concerned reminding them of their obligations to pay counsel's fees and requesting an explanation for the non-payment: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 16. The letter must be substantially in the form of the letter annexed to the terms of work and marked 'C', or some reasonable adaptation of it: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 16; Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(1). Provision is made as to the persons to whom such letters should be addressed and the method of sending: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 22.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(1)(b)(i).

8 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(1)(b)(ii).

9 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(1)(c). The further reminder letter referred to in the text is a letter under the Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 16 (see note 6).

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1308. Issue and revocation of Withdrawal of Credit Directions.

In any case in which the Chair of the Bar Standards Board¹ is entitled to issue a Withdrawal of Credit Direction² he must write to such person or persons (as the case may be) to the effect that he will make such a direction unless written representations received by him within 14 days after the date of such letter or within such extended period as he may allow justify an exceptional departure from this process³. Unless persuaded by such representations, and after consultation with the Law Society, the Chair may then issue the direction, whether or not any fees remain unpaid⁴.

Any notified solicitor⁵ and any barrister may at any time after the expiration of six months after the name of any person or firm was first included in the list of persons named in Withdrawal of Credit Directions⁶ seek the revocation of any relevant direction and the amendment of the list; and the Chair is empowered (but not obliged) to accede to such application upon such terms as he considers appropriate⁷.

1 The Chair of the Bar Standards Board may delegate this responsibility to any person: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 21(9); Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 15(viii). The Code of Conduct refers to the Bar Council (see PARA 1042 note 1). However in practice the body currently responsible for the regulation of barristers is the Bar Standards Board (see PARA 1049).

2 In any case in which the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(1) (applied, where appropriate, by Annexe G2 (The Contractual Terms of Work on which Barristers Offer their Services to Solicitors 2001) para 14(1)) applies (see PARA 1307). As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 17(2). Provision is made as to the content of such letters, the persons to whom they should be addressed and the method of sending: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) paras 22, 23.

4 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) paras 17(2), 18. Provision is made for the facts to be reported to the appropriate Solicitors disciplinary body: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 18A. Provision is also made as to the content and amendment of directions: Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 24.

5 As to a notified solicitor see PARA 1307 note 3.

6 As to the list of persons named in Withdrawal of Credit Directions see PARA 1307 note 5.

7 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) Annexe G1 (The Terms of Work on which Barristers Offer their Services to Solicitors and the Withdrawal of Credit Scheme 1988) para 20.

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1309. Conditional fee agreements and litigation funding agreements.

A barrister is entitled, though not obliged, to accept instructions¹ requiring him to work under a conditional fee agreement, that is, an agreement which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances, and which may provide for a success fee². As from a day to be appointed, a barrister is also entitled to accept work under a litigation funding agreement; that is, an agreement under which a person agrees to fund, in whole or in part, the provision of advocacy or litigation services by someone other than the funder to another person, who agrees to pay a sum to the funder in specified circumstances³.

1 As to the giving and acceptance of instructions see PARAS 1173-1199.

2 See the Courts and Legal Services Act 1990 s 58(2)(a) (s 58 substituted by the Access to Justice Act 1999 s 27(1)); and the Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 604(c). As to the Code of Conduct see PARA 1150. A conditional fee agreement provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances: Courts and Legal Services Act 1990 s 58(2)(b) (as so substituted). As to conditional fee agreements see further PARAS 953, 954; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1830 et seq.

3 See the Courts and Legal Services Act 1990 s 58B(2) (s 58B prospectively added by the Access to Justice Act 1999 s 28); and **CIVIL PROCEDURE** vol 12 (2009) PARA 1831. At the date at which this volume states the law no such day had been appointed.

UPDATE

1309 Conditional fee agreements and litigation funding agreements

TEXT AND NOTES--See also Courts and Legal Services Act 1990 s 58AA (added by Coroners and Justice Act 2009 s 154(2)) which provides for the regulation of damages-based agreements in respect of claims relating to employment matters.

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1310. Fees in respect of work done by other barristers.

A self-employed barrister¹ who receives fees in respect of work done by another barrister must himself and without delegating the responsibility to anyone else pay forthwith the whole of the fee in respect of that work to that other barrister². A self-employed barrister who arranges for another barrister to undertake work for him (other than a pupil or a person who has asked to do the work in order to increase his own skill or experience) must himself and without delegating the responsibility to anyone else pay proper financial remuneration for the work done and make payment within a reasonable time and in any event within three months after the work has been done unless otherwise agreed in advance with the other barrister³.

1 As to self-employed barristers see PARA 1036.

2 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 406.1. As to the Code of Conduct see PARA 1150.

3 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 406.2.

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1311. Clerk's fees.

Fees paid to a barrister customarily include fees to which his clerk is entitled, and which may be recovered from the barrister by the clerk in a claim for money had and received¹. The clerk has no legal right to demand any fee or remuneration from the barrister's clients².

¹ *Lyster v Spearman* (1882) 72 LT Jo 391. Many clerks are now paid a salary or a salary and a small percentage of a barristers fees.

² *Ex p Cotton* (1846) 9 Beav 107.

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1312. Duty to keep records.

A barrister must ensure that adequate records supporting the fees charged or claimed in a case are kept at least until his fees have been paid, any taxation, determination or assessment of costs in the case has been completed, or the time for lodging an appeal against assessment or the determination of that appeal has expired, whichever is the last-happening event¹. A barrister must provide his professional client², licensed access client³ or other intermediary⁴ or lay client⁵ with such records or details of the work done as may reasonably be required⁶.

1 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(f). As to the Code of Conduct see PARA 1150.

2 As to the meaning of 'professional client' see PARA 1174.

3 As to the meaning of 'licensed access client' see PARA 1173 note 13.

4 As to the meaning of 'intermediary' see PARA 1161 note 16.

5 As to the meaning of 'lay client' see PARA 1155 note 2.

6 Code of Conduct of the Bar of England and Wales (8th Edn, 2004) para 701(f).

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B. ASSESSMENT OF FEES

1313. When barristers' fees will be assessed.

A barrister's fees may fall to be assessed on an assessment of the costs payable to a party to litigation¹, on an assessment of the costs payable to the barrister's instructing solicitor by his client, or on an assessment of the fees payable to the barrister in a publicly funded case.

A barrister's fees which have been incurred by his instructing a solicitor or other professional client² on behalf of the lay client in the course of litigation become part of the costs of the claim; and if the client on whose behalf such fees have been incurred is awarded costs, he may recover the fees, to the extent allowed on assessment, from the party against whom costs have been awarded³. Whether or not so recoverable from another party, a barrister's fees incurred by a solicitor on behalf of a client may be recovered by the solicitor from the client, subject to the client's right to have the solicitor's bill assessed⁴.

On assessment between solicitor and client costs are in general⁵ assessed on the indemnity basis⁶, subject to certain presumptions: costs, including counsel's fees, are presumed to have been reasonably incurred if they were incurred with the express or implied approval of the client⁷, and to have been reasonable in amount if the amount has been expressly or impliedly approved by the client⁸; costs are presumed to have been unreasonably incurred if they are of an unusual nature or amount and the solicitor did not tell his client that as a result he might not recover all of them from the other party⁹. Such unusual costs include the costs of employing a third counsel¹⁰. On assessment between solicitor and client, counsel's fees which were not paid before the bill was delivered, but which are paid before the assessment is completed, will be allowable only if they were described in the bill as not then paid¹¹. If this has not been done, the court has a discretion whether to allow the solicitor to withdraw the bill and deliver a fresh one so that the fees paid may be recovered¹².

1 A barrister who is himself a party to litigation may recover by way of costs remuneration for work done which required the application of his training, skills and professional experience, but not for his attendance at any hearing or conference: see *Khan v Lord Chancellor* [2003] EWHC 12 (QB), [2003] 2 All ER 367, [2003] 1 WLR 2385. As to the fees of a barrister who represents another barrister on the assessment of the second barrister's publicly funded fees see *R v Boswell* [1987] 2 All ER 513, [1987] 1 WLR 705; and *Jackson v Lord Chancellor* [2003] EWHC 626 (QB), [2003] NLJR 515, [2003] All ER (D) 402 (Mar).

2 As to the persons from whom instructions may be accepted see PARAS 1173-1176.

3 As to the principles on which costs are awarded see CPR 44.3 et seq; and **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq.

4 See the Solicitors Act 1974 s 70; and PARAS 971, 972, 974, 985.

5 Ie except where relating to a bill which is to be paid out of the Community Legal Service Fund: CPR 48.8(1). As to the Community Legal Service see **LEGAL AID** vol 65 (2008) PARA 31 et seq.

6 As to assessment of costs on the indemnity basis see **CIVIL PROCEDURE** vol 12 (2009) PARA 1747.

7 CPR 48.8(2)(a). In *Re Harrison* [1908] 1 Ch 282 fees paid to counsel briefed in direct opposition to the instructions of the lay client were disallowed on assessment, even though the counsel in question had advised during the progress of the case, and it is considered that a costs judge would reach the same decision today. As to the relevance of previous case law see **CIVIL PROCEDURE** vol 12 (2009) PARA 1736.

8 CPR 48.8(2)(b).

9 CPR 48.8(2)(c).

10 *Re Broad and Broad* (1885) 15 QBD 252, DC (affd (1885) 15 QBD 420, CA); but see *Wastell v Leslie* (1844) 14 Sim 84. As to the circumstances in which the costs of three counsel are allowed on assessment between the parties see PARA 1316.

11 See the Solicitors Act 1974 s 67; and PARA 959.

12 *Chappell v Mehta* [1981] 1 All ER 349, CA; *Re Taxation of Costs, Re A Solicitor* [1943] Ch 48, [1943] 1 All ER 157; *Re Solicitor* [1951] 1 All ER 592.

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1314. Fees for work out of court and not covered by the brief fee.

Provided it was reasonable for the work to be done and the cost was reasonable and proportionate¹ fees will be allowed on assessment for work done by counsel in settling claim forms, statements of cases, affidavits, skeleton arguments², notices of appeal settling orders and other documents³, advising on merits or evidence, conferences and consultations⁴, a 'view' of the locus in quo⁵, and the cost of counsel attending on a commission to take evidence abroad⁶.

1 See CPR 44.4, 44.5; and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1747, 1748.

2 See *Hornsby v Clark Kenneth Leventhal (a firm)* [2000] 4 All ER 567 for the correct approach to an assessment of counsel's fees for drafting a skeleton argument.

3 Eg replies to a questionnaire concerning a party's means in divorce proceedings: see *D v D* [2002] EWHC 2511 (Fam).

4 *Brush v Bower Cotton & Bower (a firm)* [1993] 4 All ER 741, [1993] 1 WLR 1328.

5 Prior to the introduction of the present system for assessment of costs under CPR 48.8 (see **CIVIL PROCEDURE** vol 12 (2009) PARAS 1812-1813), counsel's fees for a view were allowed on an assessment if reasonable in the circumstances: *Leeds Forge Co Ltd v Deighton's Patent Flue and Tube Co Ltd* [1903] 1 Ch 475. As to the relevance of previous case law see **CIVIL PROCEDURE** vol 12 (2009) PARA 1736.

6 *Kuwait Airways Corp v Iraqi Airways Company (Body Corporate)* [2003] 1 Costs LR 130, HL (counsel and solicitors' fees for attending on their client in Iraq allowed on assessment as it was reasonable for them to travel to Iraq to take instructions and collect evidence). If counsel acting for a legally aided client is required to represent his client in a foreign court, he is entitled to be paid for that work: *R v Raji* [2003] 4 Costs LR 636 (legal aid assessment).

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1315. Brief fees.

On assessment of costs there is no precise standard of measurement of the necessary and proper brief fee to be allowed to counsel for all cases: what fee a hypothetical counsel, capable of conducting the case effectively but unable or unwilling to insist on the high fees sometimes demanded by counsel of pre-eminent reputation, would be content to take upon the brief, should be estimated¹. The brief fee covers all the work done by way of preparation for representation at the hearing and attendance on the first day of the hearing², and includes remuneration for taking a note of the judgment of the court³.

The higher fees of leading rather than junior counsel will be allowed where it was reasonable to instruct leading counsel⁴. A special fee paid to counsel to obtain his services in a particular court ought never to be allowed⁵. It is wrong, however, to reduce the fee allowed for counsel based in London in respect of a case heard out of London on the ground that there are a small number of locally based counsel who would have charged less⁶. Additional fees to those originally marked on the brief may be allowed, however, if further material is sent to counsel⁷, or if the expected nature of the hearing changes, for example, if opposition is anticipated to a motion which was originally expected to be unopposed⁸, or if written submissions are required in a complex or exceptional case⁹. The cost of a brief to counsel may be allowed even if counsel did not actually attend the trial¹⁰, or if the case is settled before trial, provided the brief was not prematurely delivered¹¹.

Although counsel is *prima facie* entitled to the same fee in the Court of Appeal as in the court below, this is a rule to which there may be many exceptions¹².

1 *Simpsons Motor Sales (London) Ltd v Hendon Corpn* [1964] 3 All ER 833, [1965] 1 WLR 112; *Loveday v Renton (No 2)* [1992] 3 All ER 184 (legal aid assessment); *Hornsby v Clark Kenneth Leventhal (a firm)* [2000] 4 All ER 567 (legal aid assessment); *Guide to the Summary Assessment of Costs* (2002 Edn) para 43. Guideline figures are published in some cases: see *Guide to the Summary Assessment of Costs* (2002 Edn) paras 44, 51, 55, 64, Appendix 2. See also **LEGAL AID**.

2 *Loveday v Renton (No 2)* [1992] 3 All ER 184 at 190 per Hobhouse J.

3 See *Practice Direction--Appeals* PD 52 para 5.14(1). This includes having the note transcribed accurately; attempting to agree the note with the other side if represented; submitting the note to the judge for approval where appropriate; revising it if so requested by the judge; providing any copies required for the appeal court, instructing solicitors and lay client; and providing a copy of the note to an unrepresented appellant: *Practice Direction--Appeals* PD 52 para 5.14(2)-(7).

4 *R v Dudley Magistrates' Court, ex p Power City Stores Ltd* (1990) 154 JP 654 (the appropriate question was whether the defendant acted reasonably in instructing leading counsel, not whether a more junior counsel could have dealt with the case); *Higgs v Camden and Islington Health Authority* [2003] EWHC 15 (QB), 72 BMLR 95. For a summary of the factors affecting the reasonableness of instructing leading counsel, or leading and junior counsel, see *Juby v London Fire and Civil Defence Authority, Saunders v Essex County Council* (24 April 1990, unreported) per Evans J.

5 *The Warkworth* (1885) 1 TLR 659, CA.

6 *Self v Self* [1954] P 480, [1954] 2 All ER 550, a case concerned with legal aid assessment; applied in relation to assessment between parties also in *Young v Young and Kohler* [1955] 1 All ER 796, [1955] 1 WLR 395. See also *Eaves v Eaves and Powell* [1956] P 154, [1955] 3 All ER 849; *Raybould v Raybould* [1968] 1 All ER 608, [1968] 1 WLR 366.

7 *Wakefield v Brown* (1874) LR 9 CP 410.

8 *Stephens v Lord Newborough* (1848) 11 Beav 403.

9 *Perry v Lord Chancellor* (1994) Times, 26 May.

10 *Taylor v Clarke* (1862) 13 ICLR 571; *Charman v Brandon* (1900) 82 LT 369. In *Re a Company (No 004081 of 1989)* [1995] 2 All ER 155, brief fees were allowed (on the indemnity basis) for counsel who were only required to attend the trial for ten minutes. As to the assessment of costs on the indemnity basis see **CIVIL PROCEDURE** vol 12 (2009) PARA 1747.

11 *Thomas v Palin* (1882) 21 ChD 360; *Re Holberton's Settlement Trusts, Thorburn v Hart* [1953] 2 All ER 506n, [1953] 1 WLR 1080 (assessment on solicitor and client basis); *Martin v Holland & Barrett* [2002] 3 Costs LR 530 (amount allowed for brief fee reduced by reason of settlement). See also *Harrison v Leutner* (1881) 16 ChD 559.

12 *Sunnucks v Smith* [1950] Ch 534, [1950] 1 All ER 550, explaining *Sturgis v Morse (No 2)* (1859) 26 Beav 562; *Wegmann v Corcoran, Witt & Co* (1880) 41 LT 792. In most cases the appropriate level of refresher fees at trial will be a helpful guide to the appropriate level of refresher fees in the Court of Appeal: *Hornsby v Clark Kenneth Leventhal (a firm)* [2000] 4 All ER 567 per Jackson J (legal aid assessment). As to the assessment of brief fees in the House of Lords see *Report from the Appeal Committee of the House of Lords* [1999] 1 Cr App Rep 241.

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1316. Number of counsel.

The number of counsel allowed on assessment of the costs of any hearing is in general a matter of discretion, although provided it was reasonable and proportionate to instruct two or more counsel, those costs are likely to be allowed on a detailed assessment¹.

Prior to the coming into force of the Civil Procedure Rules ('CPR')², the following factors applied to the question of whether more than one counsel's fees would be allowed on an assessment of costs, and it is likely that a costs judge will apply the same principles:

- 1870 (1) the fact that a petition was unopposed³, or that counsel appeared for a neutral party⁴, was not of itself sufficient reason for disallowing the costs of two counsel;
- 1871 (2) on the hearing of a claim, the briefing of leading counsel was desirable if it was a difficult case or involved large sums of money⁵.
- 1872 (3) the costs of two counsel briefed for a trial were generally allowed⁶. Both may be junior counsel⁷. Generally the costs of only one counsel would be allowed on a reference to arbitration, but there was no inflexible rule to this effect⁸;
- 1873 (4) as a general rule the costs of no more than two counsel were allowed in respect of any hearing⁹, unless it was shown to have been essentially necessary for the purpose of doing justice between the parties at the hearing that three counsel should have been employed or unless the case was one in which a reasonable and prudent man, acting with ordinary prudence, would not have ventured to come into court without three counsel¹⁰;
- 1874 (5) special circumstances that may justify the employment of three counsel included the unusual complication and difficulty of the case, the length of the hearing, the number of witnesses and volume of documents, the amount of money involved and the importance of the case to the community¹¹;
- 1875 (6) the fact that the junior counsel originally instructed in the case was appointed Queen's Counsel before the hearing was not a sufficient reason for allowing the fees of a third counsel¹²; nor is compliance with a circuit rule¹³; nor uncertainty as to whether one of the counsel originally briefed would be able to attend the trial¹⁴; nor the fact that counsel appeared for several parties sharing a common case¹⁵; nor the number of counsel employed by the other side¹⁶; nor, in the House of Lords, the fact that the Court of Appeal certified the case as fit for three counsel¹⁷;
- 1876 (7) in an appropriate case the court may certify at the end of a hearing that it was fit for three counsel¹⁸.

1 As to reasonableness and proportionality see CPR 44.4, 44.5; and **CIVIL PROCEDURE** vol 12 (2009) PARAS 1747-1748. See also *Lockstone v London, Brighton and South Coast Rly Co* (1862) 12 CBNS 243; *Stanton v Baring* [1875] WN 188; *Kirkwood v Webster* (1878) 9 ChD 239; *Bidder v Bridges* [1887] WN 208; *Denaby and Cadeby Main Collieries Ltd v Yorkshire Miners' Association* (1907) 23 TLR 635, CA; *Mercedes Daimler Motor Co Ltd v FIAT Motor Cab Co Ltd* (1913) 31 RPC 8; *Re WT Potts* [1935] Ch 334; *Gorfin v Odhams Press Ltd* [1958] 1 All ER 578, [1958] 1 WLR 314, CA. See however *Peel v London and North-Western Rly Co (No 2)* [1907] 1 Ch 607; *Hosie v Malcolm* [1966] LS Gaz R404; *Re a Company (No 004081 of 1989)* [1995] 2 All ER 155.

2 As to the Civil Procedure Rules see **CIVIL PROCEDURE** vol 11 (2009) PARA 30 et seq; **CIVIL PROCEDURE** vol 12 (2009) PARA 1729 et seq. As to the relevance of previous case law see **CIVIL PROCEDURE** vol 12 (2009) PARA 1736.

3 *Sturge v Dimsdale* (1846) 9 Beav 170; *Friend v Solly* (1847) 10 Beav 329.

4 *Re Overend, Gurney & Co Ltd* (1867) 37 LJ Ch 161 (originating summons; neutral liquidator); *Re Tuck* [1928] WN 90 (independent trustees); *Re a Company (No 004081 of 1989)* [1995] 2 All ER 155 (trustees submitted to act as directed by the court).

5 See *Re Hawkins, White v White* [1916] 2 Ch 570 at 579-580 per Sargant J; *Re Norris, Lindsell v Norris* (1919) 147 LT Jo 26; *Re Banque des Marchands de Moscou (Koupetschesky), Royal Exchange Assurance v Liquidator, Wilenkin v Liquidator* [1952] WN 151 at 152 per Vaisey J; *Re Breeden's Settlement Trusts, Breeden v Breeden* [1964] 2 All ER 516n, [1964] 1 WLR 901.

6 *Gorfin v Odhams Press Ltd* [1958] 1 All ER 578, [1958] 1 WLR 314, CA (fee for leading counsel disallowed in this particular case without raising a question of principle); *Llanover v Homfray* [1884] WN 134. In *Bruty v Edmundson* [1918] 1 Ch 112, CA, the costs of two counsel were allowed to a solicitor-trustee against whom serious allegations of misconduct were made but no relief was claimed; see also *Re a Company (No 004081 of 1989)* [1995] 2 All ER 155. For a summary of the factors affecting the reasonableness of instructing leading counsel, or leading and junior counsel, see *Juby v London Fire and Civil Defence Authority, Saunders v Essex County Council* (24 April 1990, unreported) per Evans J.

7 *Douglas v Associated Newspapers* (1922) 67 Sol Jo 48.

8 *Hawkins v Rigby* (1860) 29 LJCP 228; *Sinclair v Great Eastern Rly Co* (1870) LR 5 CP 135; *Benton v Lever & Co* (1885) 1 TLR 499; *Orient Steam Navigation Co v Ocean Marine Insurance Co* (1887) 35 WR 771, DC; *Drew v Josolyne* (1888) 4 TLR 717, DC.

9 *Smith v Earl of Effingham* (1847) 10 Beav 378; *A-G v Munro* (1849) 1 Mac & G 213; *Flockton v Peake* (1864) 4 New Rep 456; *Smith v Buller* (1875) LR 19 Eq 473; *France v Carver* [1875] WN 171; *Merchant Banking Co v Maud* (1875) LR 20 Eq 452; *Wegmann v Corcoran, Witt & Co* (1880) 41 LT 792; *Mason v Brentini* (1880) 42 LT 726; *Re Le May, Le May v Welsh* [1885] WN 180; *Leonhardt & Co v Kalle & Co* (1895) 12 RPC 306; *Glamorgan County Council v Great Western Rly Co* [1895] 1 QB 21; *Dyer v London School Board* [1903] WN 83; *Denaby and Cadeby Main Collieries Ltd v Yorkshire Miners' Association* (1907) 23 TLR 635, CA; *A-G v Birmingham, etc Drainage Board* (1908) 52 Sol Jo 855; *Mercedes Daimler Motor Co Ltd v FIAT Motor Car Co Ltd* (1913) 31 RPC 8.

10 *Pearce v Lindsay* (1860) 1 De GF & J 573; *Kirkwood v Webster* (1878) 9 ChD 239; *Dashwood v Magniac* [1892] WN 54; *Re Anglo-Austrian Printing and Publishing Union* [1894] 2 Ch 622; *Perry & Co Ltd v Hessin & Co* (1913) 108 LT 332.

11 *Betts v Clifford* (1860) 1 John & H 74; *Wentworth v Lloyd* (1866) LR 2 Eq 607; *North Eastern Rly Co v Jackson* (1874) 22 WR 629; *Smith v Buller* (1875) LR 19 Eq 473; *Stanton v Baring* [1875] WN 188; *Millard v Burroughes* [1880] WN 4; *The Mammoth* (1884) 9 PD 126; *Bidder v Bridges* [1887] WN 208; *London, Chatham and Dover Rly Co v South-Eastern Rly Co* (1889) 60 LT 753; *Re Cathcart* [1893] WN 107; *Peel v London and North-Western Rly Co (No 2)* [1907] 1 Ch 607; *Great Western Rly Co v Carpalla United China Clay Co Ltd (No 2)* [1909] 2 Ch 471.

12 *Green v Briggs* (1849) 7 Hare 279; *Midland Rly Co v Brown* (1853) 10 Hare App II xlv; *Betts v Cleaver* (1872) 7 Ch App 513, CA; *Re Charles Lafitte & Co* (1875) LR 20 Eq 650; *Memorandum of the Lords Justices* (1875) 10 Ch App 540.

13 *Payne v Schmidt* [1949] 2 All ER 741, CA.

14 *Mason v Brentini* (1880) 42 LT 726; *Perry & Co Ltd v Hessin & Co* (1913) 108 LT 332.

15 *Haslam v O'Connor* (1872) IR 6 Eq 615.

16 *Re Charles Lafitte & Co* (1875) LR 20 Eq 650; but see *Stanton v Baring* [1875] WN 188; *Re WT Potts* [1935] Ch 334; *British Metal Corpn Ltd v Ludlow Bros (1913) Ltd* [1938] Ch 787, [1938] 3 All ER 194.

17 *Fluffon Ltd v William Frost & Sons Ltd* (1965) 109 Sol Jo 417, CA. The fees of three counsel may be allowed in the Court of Appeal even though only two were instructed in the court below: *Fluffon Ltd v William Frost & Sons Ltd*.

18 *Monnet v Beck* (1897) 14 RPC 777 at 850; *Pneumatic Tyre Co Ltd v Ixion Patent Pneumatic Tyre Co Ltd* (1897) 14 RPC 853 at 875; *Badische Anilin und Soda Fabrick v La Société Chimique des Usines du Rhône and Wilson* (1898) 14 RPC 875 at 892; *Marconi and Marconi's Wireless Telegraph Co Ltd v British Radio-Telegraph and Telephone Co Ltd* (1911) 28 RPC 181 at 220; *Amalgamated Properties of Rhodesia (1913) Ltd v Globe and Phoenix Gold Mining Co Ltd* (1916) 116 LT 111; *Re De Keyser's Royal Hotel Ltd, De Keyser's Royal Hotel Ltd v R* (1919) 120 LT 396, CA; *Corbett v IRC* (1937) 158 LT 98 at 100-101; *Carl Zeiss Stiftung v Rayner & Keeler Ltd (No 2)* [1965] Ch 596, [1965] 1 All ER 300, CA; *Fluffon Ltd v William Frost & Sons Ltd* (1965) 109 Sol Jo 417, CA.

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(iii) Liability to Tax

1317. Liability to income tax.

A barrister is charged to income tax under Case II of Schedule D in respect of annual profits or gains arising or accruing to him from his profession¹. No sum may be deducted in respect of any disbursements or expenses, not being money wholly and exclusively paid out or expended by a barrister for the purposes of his profession². In determining whether expenses have been incurred exclusively for professional purposes, regard must be had to the object of the expenditure and not just to its effect; but the barrister's conscious motive at the time when the expenditure is incurred, whilst of great significance, is not necessarily conclusive³. A barrister working partly in chambers and partly at home cannot deduct expenses incurred in travelling between those two places⁴.

1 See the Income and Corporation Taxes Act 1988 s 18; and **INCOME TAXATION** vol 23(1) (Reissue) PARA 88 et seq. See further the Bar Council's Taxation and Retirement Benefits Handbook (5th Edn) (reproduced in the *Bar Handbook 2008* Pt VIII).

2 See the Income and Corporation Taxes Act 1988 s 74(a); and **INCOME TAXATION** vol 23(1) (Reissue) PARA 182.

3 *Mallalieu v Drummond* [1983] 2 AC 861, [1983] 2 All ER 1095, HL (the fact that, in incurring expenditure on the replacement and cleaning of clothing worn only in court and in chambers and on the way there, a barrister's conscious motive was to serve the purposes of her profession did not preclude a finding that another motive, albeit unconscious, was to provide herself with clothing which she needed as a human being; the expenditure could not, therefore, be deducted).

4 *Newsom v Robertson* [1953] Ch 7, [1952] 2 All ER 728, CA. For items which are tax deductible as revenue and capital expenditure see the Bar Council's Taxation and Retirement Benefits Handbook (5th Edn) paras 1.22-1.24.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/4. BARRISTERS/(6) TERMS OF WORK AND REMUNERATION/(iii) Liability to Tax/1318. Liability to value added tax.

1318. Liability to value added tax.

As persons supplying professional services, barristers are subject to value added tax¹. Barristers whose gross receipts exceed a specified sum per annum² are required to register with the Commissioners for Her Majesty's Revenue and Customs³, and to pay value added tax at the rate of 17.5 per cent on the value of professional services rendered⁴. For this purpose, a barrister is treated as supplying his services when the fee for those services is received or a VAT notice is issued, whichever is the earlier⁵.

1 See the Value Added Tax Act 1994 s 1; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 4.

2 At the date at which the volume states the law, the sum specified is £67,000 per annum: see the Value Added Tax Act 1994 Sch 1 para 1 (amended by SI 2008/707). However, the amount is regularly updated by statutory instrument made in pursuance of the Value Added Tax Act 1994 Sch 1 para 15.

3 See the Value Added Tax Act 1994 Sch 1 para 1; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 64.

4 See the Value Added Tax Act 1994 s 2(1)(a); and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 5.

5 See the Value Added Tax Regulations 1995, SI 1995/2518, reg 92; and **VALUE ADDED TAX** vol 49(1) (2005 Reissue) PARA 42.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(1) INTRODUCTION/(i) In general/1319. In general.

5. LICENSED CONVEYANCERS

(1) INTRODUCTION

(i) In general

1319. In general.

Provision is made in Part II of the Administration of Justice Act 1985¹ for the purpose of regulating the provision of conveyancing services² by persons who hold licences³ in force under that Act⁴. The statutory restriction⁵ on a person preparing certain instruments when not qualified to act as a solicitor does not apply to any act done by a licensed conveyancer in the course of the provision of any conveyancing services if he is not precluded⁶ from providing those services as a licensed conveyancer⁷.

An individual⁸ must not describe himself or hold himself out as a licensed conveyancer unless he holds such a licence so in force⁹.

With regard to conveyancing services¹⁰, provision is also made in the Courts and Legal Services Act 1990¹¹ for the establishment of the Authorised Conveyancing Practitioners Board¹² and for the making of regulations about the competence and conduct of authorised practitioners¹³. At the date at which this volume states the law, however, the board had not been set up and no such regulations had been made¹⁴.

1 See the Administration of Justice Act 1985 Pt II (ss 11-39); and PARA 1320 et seq.

2 References in the Administration of Justice Act 1985 Pt II to conveyancing services are references to the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land: ss 11(3), 39(1). For these purposes, 'disposition' does not include a testamentary disposition or any disposition in the case of a short lease within the Law of Property Act 1925 s 54(2) (see **LANDLORD AND TENANT** vol 27(1) (2006 Reissue) PARA 101); but, subject to that, includes in the case of leases both their grant and their assignment; and 'acquisition' has a corresponding meaning: Administration of Justice Act 1985 s 11(3)(a), (b).

As from a day to be appointed the Administration of Justice Act 1985 s 11(3) is substituted, and s 11(3A) is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 1, 2(b) so that references to conveyancing services also include references to any other activities which are reserved instrument activities for the purposes of the Legal Services Act 2007 (see s 12, Sch 2; and PARA 512). At the date at which this volume states the law no such day had been appointed.

3 For these purposes, 'licence' means a licence to practise as a licensed conveyancer; and 'licensed conveyancer' means a person who holds a licence in force under the Administration of Justice Act 1985 Pt II: ss 11(2), 39(1). References to practising as a licensed conveyancer are references to providing, as the holder of a licence, conveyancing services in accordance with the licence: s 11(2).

4 Administration of Justice Act 1985 s 11(1). As from a day to be appointed the Administration of Justice Act 1985 s 11(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 2(a) so that provision is made for conveyancing services and other services by persons who hold licences in force under the Administration of Justice Act 1985 Pt II or who are recognised bodies. As to the meaning of 'recognised body' see PARA 1392 note 14. At the date at which this volume states the law no such day had been appointed.

During the transitional period, every conveyancing partnership (ie a partnership at least some of the members of which are licensed conveyancers) and every body recognised under the Administration of Justice Act 1985 s 32 (see PARA 1392) is deemed to be authorised by the Council to carry on conveyancing services: Legal Services

Act 2007 Sch 5 para 11(3)(a), (5). This authority is exercisable in accordance with and subject to, in the case of a recognised body, any condition subject to which its recognition has effect, and the regulatory arrangements of the Council: Sch 5 para 11(4). For these purposes a conveyancing licence is to be treated as not in force during any period when it is suspended: Sch 5 para 11(6).

As to the meaning of 'reserved instrument activities' see PARA 512 note 5. As to the meaning of 'probate activities' see PARA 512 note 6. As the meaning of 'transitional period' for these purposes see PARA 516 note 9. As to recognised bodies see PARA 1392 et seq.

5 le under the Solicitors Act 1974 s 22(1): see PARA 595.

6 le precluded by any conditions imposed as mentioned in the Administration of Justice Act 1985 s 16(3)(a) (see PARA 1330): s 11(4). See note 7.

7 Administration of Justice Act 1985 s 11(4). As from a day to be appointed s 11(4) is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1, para 1, 2(c), Sch 23. At the date at which this volume states the law no such day had been appointed.

8 'Individual' presumably excludes bodies of persons corporate or unincorporate; cf the definition of 'person' in the Interpretation Act 1978 s 5, Sch 1 (see **STATUTES** vol 44(1) (Reissue) PARA 1382); and *Whitney v IRC* [1926] AC 37 at 43, HL, per Viscount Cave LC.

9 Administration of Justice Act 1985 s 35(1). As to the penalty for contravention of s 35(1) see PARA 598.

10 As to the meaning of 'conveyancing services' for these purposes see PARA 495 note 5.

11 See the Courts and Legal Services Act 1990 ss 34-52 (ss 46A, 46B added by the Enterprise Act 2002 s 278(1), Sch 25 para 23(1), (4)). Sections 34, 35, 40 came into force on 1 April 1991 (see the Courts and Legal Services Act 1990 (Commencement No 3) Order 1991, SI 1991/608) but no provision had been made thereunder at the date at which this volume states the law. At the date at which this volume states the law, ss 36-39, 41-52 had not been brought into force.

As from a day to be appointed the Courts and Legal Services Act 1990 ss 34-52 are repealed by the Legal Services Act 2007 s 208(1), 210, Sch 21 paras 83, 87, Sch 23. At the date at which this volume states the law no such day had been appointed.

12 As to the prospective establishment of the board see the Courts and Legal Services Act 1990 s 34; and as to the prospective functions of the board see s 35. No such board had, however, been established at the date at which this volume states the law. See note 11.

13 See the Courts and Legal Services Act 1990 s 40. See also note 11. As to the meaning of 'authorised practitioner' see PARA 424 note 6.

14 See note 11.

UPDATE

1319 In general

NOTE 4--Day appointed is 31 March 2009: SI 2009/503.

NOTE 11--Day appointed for repeal of Courts and Legal Services Act 1990 ss 34-52 is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(1) INTRODUCTION/(ii) The Council for Licensed Conveyancers/1320. Establishment and membership.

(ii) The Council for Licensed Conveyancers

1320. Establishment and membership.

A body is established to be known as the Council for Licensed Conveyancers¹. It is the general duty of the Council to ensure that the standards of competence and professional conduct among persons who practise as licensed conveyancers² are sufficient to secure adequate protection for consumers, and that the conveyancing services³ provided by such persons are provided both economically and efficiently⁴.

The Council is a body corporate⁵ and must consist of not more than 11 persons who are licensed conveyancers⁶, and not more than ten persons who are not licensed conveyancers⁷, in each case being persons elected or nominated as members of the Council in accordance with a scheme prepared in accordance with the relevant statutory provisions⁸ and approved by the Secretary of State⁹. The Council must, in accordance with any such scheme, elect one of its members to be chairman of the Council¹⁰. The Council has power to pay to the members of the Council or any of its committees such fees for attendance and such travelling, subsistence or other allowances as the Council may determine¹¹.

As from 20 January 2004 the Council consists of up to 11 licensed conveyancers¹² and up to ten persons who are not licensed conveyancers¹³ provided that the number of the former exceeds by one the number of the latter, save where a vacancy occurs¹⁴. All members of the Council (including the outgoing chairman) are eligible for election as chairman or deputy chairman¹⁵.

A vacancy automatically occurs in the office of a member of the Council and his right to hold office ceases immediately:

- 1877 (1) on his death¹⁶;
 - 1878 (2) on receipt by the Council of his resignation in writing¹⁷;
 - 1879 (3) on the expiration of his term of office¹⁸;
 - 1880 (4) if, without the consent of the Council given in advance, he fails to attend more than three consecutive meetings of the Council or of any committee of which he is a member¹⁹;
 - 1881 (5) if he is convicted of any relevant criminal offence²⁰;
 - 1882 (7) if he is adjudged bankrupt or makes a composition or arrangement with his creditors²¹;
 - 1883 (8) if he is a person to whom the relevant provisions with regard to mental capacity apply²²;
 - 1884 (9) if, being a licensed conveyancer member:
- 33
- 22. (a) he ceases to hold a licence²³;
 - 23. (b) he is made the subject of a disciplinary order²⁴;
 - 24. (c) his licence is suspended²⁵;
 - 25. (d) the Council's powers of intervention are exercised against him or his practice²⁶;
- 34
- 1885 (10) as a member of another profession an order has been made against him by his professional body²⁷;

- 1886 (11) if, being a nominated member, the body that nominated him withdraws the nomination²⁸;
- 1887 (12) if he is or becomes an employee, self-employed officer or general consultant of any organisation having as its main object the protection or promotion of licensed conveyancers or the defence of its members²⁹;
- 1888 (13) if he has failed to disclose to the Council any relevant matter pertaining to disqualification³⁰;
- 1889 (14) if he is removed from office³¹.

In the event that such a vacancy occurs the chairman of the Council must inform each member of the Council as soon as possible, and the fact must be noted at the next meeting of the Council³². Retiring members of the Council are available for re-election or nomination³³.

The term of office of a person filling a vacancy in the office of a member of the Council is three years if the vacancy arose on the expiration of a term of office, or, if the vacancy arose by virtue of the reasons listed above³⁴, then for the remainder of the term which would have been served by the previous member had the vacancy not occurred³⁵.

A member is suspended with immediate effect if he is charged with a relevant offence³⁶; served with a bankruptcy petition (or issues one on his own behalf)³⁷; or receives notice of a relevant application against him³⁸. Any such suspension must be automatically revoked if no conviction ensues, the petition is disposed of, or the application is withdrawn or dismissed³⁹.

The Council may declare a vacancy in the office of a Council member who has breached the Standing Orders of the Council, the Standing Orders for Committees or the Code of Conduct for Members of the Council For Licensed Conveyancers⁴⁰, if at least three-quarters of the Council members are present at the relevant meeting and at least three-quarters of the members present agree in which event the Council members right to hold office ceases immediately⁴¹.

1 Administration of Justice Act 1985 s 12(1).

2 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

3 As to the meaning of 'conveyancing services' see PARA 1319 note 2.

4 Administration of Justice Act 1985 s 12(2). As from a day to be appointed s 12(2) is repealed by the Legal Services Act 2007 s 182, Sch 17, Pt 1, paras 1, 3. At the date at which this volume states the law no such day had been appointed.

5 Administration of Justice Act 1985 s 12(3), Sch 3 para 1.

6 Administration of Justice Act 1985 Sch 3 para 2(1)(a).

7 Administration of Justice Act 1985 Sch 3 para 2(1)(b).

8 In accordance with a scheme under the Administration of Justice Act 1985 Sch 3 para 4 (see note 9): Sch 3 para 2(1).

9 Administration of Justice Act 1985 Sch 3 paras 2(1), 4(3). As from a day to be appointed Sch 3 paras 2(1), 4(3) are amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 29(1), (3), (8) so that the committee members are appointed rather than elected or nominated, and approval of the scheme lies with the Legal Services Board. At the date at which this volume states the law no such day had been appointed. As to the Legal Services Board see PARA 303 et seq.

Schedule 3 para 2 did not apply during the initial period, ie the period beginning with the establishment of the Council and ending immediately before the date fixed by the first scheme under Sch 3 para 4 for the coming into office of the first persons elected or nominated as members of the Council in accordance with the scheme: Sch 3 paras 2(3), 3(2) (as from a day to be appointed Sch 3 paras 2(3), 3 are repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 29(1), (4), (5), Sch 23. At the date at which this volume states the law no such day had been appointed). During that period the Council consisted of a chairman and not more than ten other members appointed by the Lord Chancellor: Sch 3 para 3(1) (as so prospectively repealed). The term of office of the chairman so appointed expired immediately before the date fixed by the first scheme for the

coming into office of the first chairman elected under Sch 3 para 2(2) (see the text to note 10); and the terms of office of the other persons so appointed expired at the end of the initial period: Sch 3 para 3(3) (as so prospectively repealed). The Council was established on 12 March 1986 (see the Administration of Justice Act 1985 (Commencement No 1) Order 1986, SI 1986/364); and the first scheme was dated 9 February 1988: see the Council for Licensed Conveyancers' Regulations for Election and Nomination of Council Members (9 February 1988) (revoked).

The Council is under a duty to prepare a scheme making provision as to (1) the election or nomination of persons for the purposes of the Administration of Justice Act 1985 Sch 3 para 2(1)(a), (b); (2) the election of a person as chairman under Sch 3 para 2(2); and (3) the tenure and vacation of office of persons so elected or nominated, and the eligibility of persons for election or nomination: Sch 3 para 4(1). Such a scheme must secure that, except during any casual vacancy (a) the total number of persons elected or nominated for the purposes of Sch 3 para 2(1)(a) exceeds by one the total number of persons elected or nominated for the purposes of Sch 3 para 2(1)(b); and (b) the persons elected or nominated for the purposes of Sch 3 para 2(1)(b) include at least two persons who represent the interests of consumers: Sch 3 para 4(2). The first such scheme was to be submitted to the Lord Chancellor for approval before the end of the period of two years beginning with the establishment of the Council: Sch 3 para 4(3). No such scheme may come into force without the Secretary of State's approval; and he may approve a scheme either as submitted to him or subject to such modifications as he thinks fit: Sch 3 para 4(3), (4) (both amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 6(b)). Where he proposes to approve a scheme subject to modifications he must notify the modifications to the Council and consider any observations of the Council on them: Sch 3 para 4(4) (amended by the Secretary of State for Constitutional Affairs Order 2003 SI 2003/1887, art 9, Sch 2 para 6(b)). Such a scheme may be varied or revoked by any subsequent such scheme: Sch 3 para 4(5). The scheme currently in force is the Council for Licensed Conveyancers' Regulations for Election and Nomination of Council Members 2004 (28 January 2004): see the text to notes 12-33.

As from a day to be appointed Sch 3 para 4 is amended by the Legal Services Act 2007 s 182, Sch 17, Pt 1, paras 1, 29 so that the committee members are appointed rather than elected or nominated, and functions currently exercised by the Secretary of State lie with the Legal Services Board. At the date at which this volume states the law no such day had been appointed.

As to transitional provisions see the Legal Services Act 2007 Sch 22 para 6.

Regulations and rules made by the Council are specifically expressed to apply to male and female persons and use 'he or she', 'his or her' and 'him or her' throughout. In this part of this title, however, where such regulations and rules are set out, 'he', 'his' and 'him' are used and are taken as including 'she' and 'her', on the same principle as that applied to statutes by the Interpretation Act 1978 s 6(a), (b): see **STATUTES** vol 44(1) (Reissue) PARA 1388.

10 Administration of Justice Act 1985 Sch 3 para 2(2). As from a day to be appointed Sch 3 para 2(2) is amended by the Legal Services Act 2007 s 182, Sch 17, Pt 1, paras 1, 29(1), (3) so that the Council appoints rather than elects one of its members to the chair. At the date at which this volume states the law no such day had been appointed.

11 Administration of Justice Act 1985 Sch 3 para 5. As to the expenses of the Council see PARA 1324; and as to the delegation of the Council's powers to committees or to members of its staff see PARA 1323. The power to make schemes under Sch 3 para 4 may not be delegated: see PARA 1323 text and note 2.

12 *le* elected or appointed in accordance with the Regulations for Election and Nomination of Council Members 2004 reg 5: reg 2.1(a). Regulations 5.2-5.27 make provision for the election of Licensed Conveyancer members to the Council: reg 5.1

13 *le* nominated or appointed in accordance with the Regulations for Election and Nomination of Council Members 2004 reg 6: reg 2.1(b). The following persons and bodies are to be invited to nominate those members of the Council who are not licensed conveyancers: (1) the Secretary of State for Trade and Industry; (2) the Chief Land Registrar; (3) the Institute of Chartered Accountants of England and Wales; (4) the Royal Institution of Chartered Surveyors; (5) the Council of Mortgage Lenders; and (6) such other bodies or persons as the Council may from time to time consider appropriate: reg 6.1. Every nomination so made must be presented to the Council before its intended date of effect: reg 6.2. Where a vacancy arises by virtue of the operation of the provisions of reg 3.1 (see text and notes 16-31) in respect of a nominated member of the Council, the appropriate person or body mentioned above must be invited to nominate another candidate to fill the vacancy but if no nomination (or no nomination acceptable to the Council) is received within three months of the request being made the Council is free to appoint a person of its own choice to serve for the remainder of the term of office of the member in respect of whom the vacancy arose: reg 6.3.

14 Regulations for Election and Nomination of Council Members 2004 reg 2.1. Vacancies occur as provided by regs 3.1 (see text and notes 16-31), 9.1 (see text and notes 36-38), 9.3 (see text and note 41): reg 2.1. A person is disqualified for election or nomination to the Council if:

- 554 (1) as a person seeking to be elected as a licensed conveyancer member he does not hold a current licence: reg 4.1(a);
- 555 (2) he has been convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence (the regulations refer to a 'serious arrestable offence' as defined by the Police and Criminal Evidence Act 1984 s 116, which provision is repealed by the Serious Organised Crime and Police Act 2005 Sch 7. As to indictable offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1102 et seq) unless the conviction is spent within the meaning of the Rehabilitation of Offenders Act 1974 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq): Regulations for Election and Nomination of Council Members 2004 reg 4.1(b);
- 556 (3) he is or has been an undischarged bankrupt or has made a composition or arrangement with his creditors unless:
18. (a) the bankruptcy is annulled either on the ground that he ought not to have been adjudged bankrupt or, where he is not subject to a Bankruptcy Restrictions Order or interim order, on the ground that his debts have been paid in full, on the date of the annulment; or
18
19. (b) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled: reg 4.1(c);
19
- 557 (4) he is a person to whom the powers and provisions of the Mental Health Act 1983 Pt VII (repealed and replaced by the Mental Capacity Act 2005: see **MENTAL HEALTH**), relating to management and administration, apply: Regulations for Election and Nomination of Council Members 2004 reg 4.1(d);
- 558 (5) an order has been made against him by the Council's Discipline and Appeals Committee (see PARA 1362) (other than an order which provides only for the payment of costs by him) or a direction is made by that Committee pursuant to the Courts and Legal Services Act 1990 Sch 8 para 17(2) (see PARA 1383), unless in either case more than six years have passed since the order was made: Regulations for Election and Nomination of Council Members 2004 reg 4.1(e);
- 559 (6) the Council's power of intervention have been exercised against him or his practice in accordance with the Administration of Justice Act 1985 Sch 5, Pt 1 (paras 1-4) (see PARA 1384) unless more than six years have passed since such powers were exercised: Regulations for Election and Nomination of Council Members 2004 reg 4.1(f);
- 560 (7) the Council is satisfied that as a member of another profession an order has been made against him by his professional body (other than an order which provides only for the payment of costs by him), unless more than six years have passed since the order was made and if he has been disqualified from holding a licence or practising certificate (as the case may be) for a period longer than six years, his licence or practising certificate has been restored: reg 4.1(g); or
- 561 (8) he is an employee, self-employed officer or general consultant of any organisation having as its main object the protection or promotion of the interests of licensed conveyancers or the defence of its members: reg 4.1(h).
- 15 Regulations for Election and Nomination of Council Members 2004 reg 8.1. No member may be a candidate for both offices on any one occasion: reg 8.1. As to nomination and election to of these offices see regs 8.2-8.9.
- 16 Regulations for Election and Nomination of Council Members 2004 reg 3.1(a).
- 17 Regulations for Election and Nomination of Council Members 2004 reg 3.1(b).
- 18 Regulations for Election and Nomination of Council Members 2004 reg 3.1(c).
- 19 Regulations for Election and Nomination of Council Members 2004 reg 3.1(d).
- 20 Regulations for Election and Nomination of Council Members 2004 reg 3.1(e). A relevant criminal offence is one involving fraud, dishonesty, deception or violence or an indictable offence. The regulations refer to a 'serious arrestable offence' as defined by the Police and Criminal Evidence Act 1984 s 116, which provision is repealed by the Serious Organised Crime and Police Act 2005 Sch 7. As to indictable offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1102 et seq. A member charged with such an offence is suspended with immediate effect: see reg 9.1(a); and text and note 36.

- 21 Regulations for Election and Nomination of Council Members 2004 reg 3.1(f).
- 22 Regulations for Election and Nomination of Council Members 2004 reg 3.1(g). The regulations refer to the Mental Health Act 1983 Pt VII which is repealed and replaced by the Mental Capacity Act 2005: see **MENTAL HEALTH**.
- 23 Regulations for Election and Nomination of Council Members 2004 reg 3.1(h)(1).
- 24 Regulations for Election and Nomination of Council Members 2004 reg 3.1(h)(2). A disciplinary order means that an order (other than an order which provides only for the payment of costs) has been made against him by the Council's Discipline and Appeal Committee pursuant to the Administration of Justice Act 1985 s 26 (see PARA 1378) or a direction is made by that Committee pursuant to the Courts and Legal Services Act 1990 Sch 8, para 17(2) (see PARA 1383): Regulations for Election and Nomination of Council Members 2004 reg 3.1(h). A member who receives notice of such an application against him is suspended with immediate effect: see reg 9.1(c).
- 25 Regulations for Election and Nomination of Council Members 2004 reg 3.1(h)(3). Licenses are suspended pursuant to the Administration of Justice Act 1985 s 24: see PARA 1359.
- 26 Regulations for Election and Nomination of Council Members 2004 reg 3.1(h)(4). The Council exercises its powers of suspension in accordance with the Administration of Justice Act 1985 Sch 5 Pt 1 (paras 1-4): see PARA 1384.
- 27 Regulations for Election and Nomination of Council Members 2004 reg 3.1(i). An order which provides only for the payment of costs does not apply.
- 28 Regulations for Election and Nomination of Council Members 2004 reg 3.1(j).
- 29 Regulations for Election and Nomination of Council Members 2004 reg 3.1(k).
- 30 Regulations for Election and Nomination of Council Members 2004 reg 3.1(l). The relevant matters are those referred to in reg 4.1(b)-(h): see text and note 14.
- 31 Regulations for Election and Nomination of Council Members 2004 reg 3.1(m). The member must be removed from office in accordance with reg 9.3: see text and note 41.
- 32 Regulations for Election and Nomination of Council Members 2004 reg 3.2.
- 33 Regulations for Election and Nomination of Council Members 2004 reg 3.3.
- 34 Ie by reason of the Regulations for Election and Nomination of Council Members 2004 reg 3.1 (with the exception of reg 3.1(c)): reg 7.1(b).
- 35 Regulations for Election and Nomination of Council Members 2004 reg 7.
- 36 Ie an offence which is the subject of the Regulations for Election and Nomination of Council Members 2004 reg 3.1(e) (see text and note 20): reg 9.1(a).
- 37 Regulations for Election and Nomination of Council Members 2004 reg 9.1(b).
- 38 Ie an application against him for an order under the Regulations for Election and Nomination of Council Members 2004 reg 3.1(h)(2) (see text and note 24), or (i) (see text and note 27): reg 9.1(c).
- 39 Regulations for Election and Nomination of Council Members 2004 reg 9.2.
- 40 As to the Code of Conduct for Members of the Council For Licensed Conveyancers see PARA 1342 et seq.
- 41 Regulations for Election and Nomination of Council Members 2004 reg 9.3.

UPDATE

1320 Establishment and membership

NOTE 4--Day appointed is 1 January 2010: SI 2009/3250.

NOTES 9, 10--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(1) INTRODUCTION/(ii) The Council for Licensed Conveyancers/1321. Officers and staff.

1321. Officers and staff.

The Council for Licensed Conveyancers¹ has power to appoint such officers and servants as it may determine², and must pay to them such remuneration as it may determine³. The Council may, as regards any officers or servants in whose case it may determine to do so, pay to or in respect of them such pensions, allowances or gratuities, or provide and maintain for them such schemes, whether contributory or not, for the payment to or in respect of them of such pensions, allowances or gratuities, as it may determine⁴.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Administration of Justice Act 1985 s 12(3), Sch 3 para 7(1).

3 Administration of Justice Act 1985 Sch 3 para 7(2).

4 Administration of Justice Act 1985 Sch 3 para 7(3). As to the expenses of the Council see PARA 1324; and as to the delegation of the Council's powers to members of its staff see PARA 1323.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(1) INTRODUCTION/(ii) The Council for Licensed Conveyancers/1322. Incidental powers and proceedings of the Council.

1322. Incidental powers and proceedings of the Council.

The Council for Licensed Conveyancers¹ has power to do anything which in its opinion is calculated to facilitate the proper discharge of its functions², including the borrowing of money³.

The powers of the Council and of any of its committees may be exercised notwithstanding any vacancy, and no proceedings of the Council or of any of its committees are invalidated by any defect in the election or nomination of a member⁴. The Council may make standing orders for regulating the proceedings, including quorum, of the Council and of any of its committees other than the Discipline and Appeals Committee⁵.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 For these purposes, 'functions' includes powers and duties: Administration of Justice Act 1985 s 39(1).

3 Administration of Justice Act 1985 s 12(3), Sch 3 para 6.

4 Administration of Justice Act 1985 Sch 3 para 9(1). As to the election or nomination of members see PARA 1320. As from a day to be appointed Sch 3 paras 2(1), 4(3) are amended by the Legal Services Act 2007 s 182, Sch 17, Pt 1, paras 1, 29(1), (10) to replace the reference to 'election or nomination' with 'appointment'. At the date at which this volume states the law no such day had been appointed.

5 Administration of Justice Act 1985 Sch 3 para 9(2). The Discipline and Appeals Committee is established under s 25: see PARA 1362. As to the delegation of the Council's powers to committees and members of its staff see PARA 1323.

UPDATE

1322 Incidental powers and proceedings of the Council

NOTE 4--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(1) INTRODUCTION/(ii) The Council for Licensed Conveyancers/1323. Delegation of powers.

1323. Delegation of powers.

Until a day to be appointed, and subject to any provision to the contrary made by or under any enactment, the Council for Licensed Conveyancers¹ may arrange for any of its functions, other than those of making rules, schemes or standing orders under Part II of the Administration of Justice Act 1985² to be discharged by a committee of the Council, or by a member of the Council's staff³. As from that day the Council may arrange for any of its functions, other than those of making rules, schemes or standing orders under Part II of the Administration of Justice Act 1985 to be discharged by a committee of the Council, or by a sub-committee of such a committee, or by an individual (whether or not a member of the Council's staff)⁴. At the date at which this volume states the law no such day had been appointed.

The Council may make rules⁵:

- 1890 (1) providing for functions conferred⁶ on any committee established under those provisions⁷ to be discharged by a committee established under these provisions⁸;
- 1891 (2) providing for any of its committees⁹ to refer any matter of a kind specified in the rules, in such circumstances as may be so specified, to any other such committee, or to the Council¹⁰.

Until a day to be appointed the number of members of a committee established under the above provisions, and the terms on which they are to hold and vacate office, are to be fixed by the Council¹¹. Such a committee may include persons who are not members of the Council, whether licensed conveyancers¹² or not, but a majority of the members of any such committee, including the chairman, are to be members of the Council¹³.

As from that day a committee or sub-committee established under the above provisions may include or consist of individuals other than members of the Council, or licensed conveyancers¹⁴. A sub-committee may also include or consist of individuals other than members of the committee¹⁵. The Council may make arrangements for the appointment and removal of members of any committee to be made other than by the Council¹⁶. A committee or sub-committee may regulate its own procedure, including quorum¹⁷. At the date at which this volume states the law no such day had been appointed.

The validity of any proceedings of such a committee is not affected by any casual vacancy among its members¹⁸.

As from a day to be appointed the above provisions are subject to any contrary provision made by or under any enactment¹⁹. At the date at which this volume states the law no such day had been appointed.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Ie under the Administration of Justice Act 1985 Pt II (ss 11-39): see PARAS 1319 et seq, 1324 et seq.

3 Courts and Legal Services Act 1990 s 53(7), Sch 8 paras 1, 12(1). In exercising its powers under Sch 8 para 12(1) or (2) (see the text and notes 6-8) the Council may impose restrictions or conditions on the committee by which the functions concerned are to be discharged: Sch 8 para 12(3). As to the Council's staff see PARA 1321.

As from a day to be appointed Sch 8 para 12(1) is amended, and 12(3) is substituted: see note 4. At the date at which this volume states the law no such day had been appointed.

4 Courts and Legal Services Act 1990 s 53(7), Sch 8 paras 1, 12(1) (para 12(1) is prospectively amended, para 12(1A)-(1D) prospectively added, and para 12(3) is prospectively substituted by the Legal Services Act 2007 s 182, Sch 17, Pt 2, paras 33, 35(1), (10)(a)-(d)). Where by virtue of the Courts and Legal Services Act 1990 Sch 8 para 12(1) (as so prospectively amended) any function may be discharged by a committee, the committee may arrange for the discharge of that function by a sub-committee of that committee, or an individual, whether or not a member of the Council's staff, and subject to any contrary direction given by the Council: Sch 8 para 12(1A), (1B) (as so prospectively added). Such arrangements made in respect of a function may provide that the function is to be exercised in accordance with the arrangements only (and not by the delegating body (ie the Council or the committee as appropriate)): Sch 8 para 12(1C), (1D) (as so prospectively added). Any power conferred by para 12(1), (1A) or (2) (see the text and notes 6-8) may be exercised so as to impose restrictions or conditions on the body or individual by whom the function is to be discharged: Sch 8 para 12(3) (as prospectively substituted).

5 Any rules so made may make such incidental and supplemental provision as the Council considers appropriate and may make different provision for different circumstances: Administration of Justice Act 1985 Sch 8 para 12(9).

6 Ie by the Administration of Justice Act 1985 Pt II: Courts and Legal Services Act 1990 Sch 8 para 12(2).

7 See note 2.

8 Courts and Legal Services Act 1990 Sch 8 para 12(2).

9 Ie including any committee established under the Administration of Justice Act 1985 Pt II: Courts and Legal Services Act 1990 Sch 8 para 12(4).

10 Courts and Legal Services Act 1990 Sch 8 para 12(4). Where any matter is so referred to a committee of the Council or to the Council, that committee or, as the case may be, the Council has the same power to deal with it as the committee referring it: Sch 8 para 12(5).

11 Courts and Legal Services Act 1990 Sch 8 para 12(6). As from a day to be appointed Sch 8 para 12(6), (7) is substituted: see note 14. At the date at which this volume states the law no such day had been appointed.

12 There is no statutory definition of 'licensed conveyancer' for these purposes; but as to the meaning of 'licensed conveyancer' for the purposes of the Administration of Justice Act 1985 Pt II see PARA 550 note 3.

13 Courts and Legal Services Act 1990 Sch 8 para 12(7) (as prospectively substituted: see note 14).

14 Courts and Legal Services Act 1990 Sch 8 para 12(6) (Sch 8 paras 12(6), (7), (7A) and (7B) prospectively substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (10)(e)).

15 Courts and Legal Services Act 1990 Sch 8 para 12(7) (as prospectively substituted: see note 14).

16 Courts and Legal Services Act 1990 Sch 8 para 12(7A) (as prospectively substituted: see note 14).

17 Courts and Legal Services Act 1990 Sch 8 para 12(7B) (as prospectively substituted: see note 14).

18 Courts and Legal Services Act 1990 Sch 8 para 12(8).

19 Courts and Legal Services Act 1990 Sch 8 para 12(10) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (10)(f)).

UPDATE

1323 Delegation of powers

TEXT AND NOTES--Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(1) INTRODUCTION/(ii) The Council for Licensed Conveyancers/1324. Expenses and accounts.

1324. Expenses and accounts.

The expenses incurred by the Council for Licensed Conveyancers¹ in the discharge of its functions² are to be defrayed out of sums received by it in respect of fees³ and out of any sums received by it by way of grants made by the Secretary of State⁴.

The Council must keep proper accounts of all sums received or paid by it and proper records in relation to those accounts⁵. It must appoint auditors to the Council⁶ and cause its accounts to be audited annually by those auditors⁷. As soon as is practicable after the accounts for any period have been audited, the Council must cause them to be published⁸ and must send a copy of them to the Secretary of State together with a copy of any report of the auditors on those accounts⁹.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'functions' see PARA 1322 note 2.

3 For these purposes, 'fees' includes charges, disbursements, expenses and remuneration: Administration of Justice Act 1985 s 39(1).

4 Administration of Justice Act 1985 s 12(3), Sch 3 para 10(1), (2) (para 10(2), (3) amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 6(b)). The Secretary of State may make grants to the Council towards meeting the expenses incurred, or to be incurred, by it in the discharge of its functions; and any sums required by him for so making grants must be paid out of money provided by Parliament: Administration of Justice Act 1985 Sch 3 para 10(2), (3) (as so amended). Grant in aid from the Lord Chancellor (who then exercised the power to grant aid) in fact ceased on 31 March 1993, from which date the Council has been entirely self-funded. As from a day to be appointed Sch 3 para 10(2), (3) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 29(1), (11) to replace 'Secretary of State' with 'Lord Chancellor'. At the date at which this volume states the law no such day had been appointed.

5 Administration of Justice Act 1985 Sch 3 para 11(1).

6 Administration of Justice Act 1985 Sch 3 para 11(2). Each of the auditors so appointed must be eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (see **COMPANIES** vol 15 (2009) PARA 969): Administration of Justice Act 1985 Sch 3 para 11(2) (amended by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 55(1), (4); and by the Companies Act 2006 (Consequential Amendments etc) Order 2008, SI 2008/948, arts 3(1)(a), 6, Sch 1 Pt 1 para 1(ff)(ii)).

7 Administration of Justice Act 1985 Sch 3 para 11(3).

8 To publish means to make known to some person other than the originator: see *Dew v DPP* (1920) 89 LJKB 1166; *Ranson v Burgess* (1927) 137 LT 530; and *A-G v Walkergate Press Ltd* (1930) 142 LT 408.

9 Administration of Justice Act 1985 Sch 3 para 11(3) (amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 6(b)). As from a day to be appointed Sch 3 para 11, (3) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 29(1), (12) to replace 'Secretary of State' with 'Lord Chancellor'. At the date at which this volume states the law no such day had been appointed.

UPDATE

1324 Expenses and accounts

NOTES 4, 9--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(1) INTRODUCTION/(ii) The Council for Licensed Conveyancers/1325. Provision of financial services.

1325. Provision of financial services.

The provision of financial services is mainly governed by the Financial Services and Markets Act 2000¹ and regulated by the Financial Services Authority². The Council for Licensed Conveyancers³ is a designated professional body⁴ for the purposes of the Financial Services and Markets Act 2000 Pt XX⁵ and consequently activities that are regulated by that Act⁶ may be carried on by licensed conveyancers who are supervised and regulated by the Council⁷. As a designated professional body the Council must make rules to regulate practices⁸ in the provision of regulated activities in relation to which the general prohibition⁹ does not apply¹⁰.

Each practice is permitted by the Council to provide regulated activities as specified by the Council by resolution and which are incidental to conveyancing services provided by the practice to a client¹¹, and legal services (other than conveyancing services) regulated by the Council and provided by the practice to a client¹².

Each practice providing regulated activities must appoint a principal¹³ as the person who is responsible for ensuring the practice has procedures and practices to enable it to comply with the Licensed Conveyancers' Designated Professional Body Rules 2004 and will supply to the Council or its agents information as the Council requires¹⁴. A practice must notify the Council immediately and in any event no later than seven days after each such appointment is made¹⁵.

The manner of the provision by a practice of any service in the course of carrying on a regulated activity must be incidental to the provision by that practice of professional services¹⁶. The regulated activities carried on by a practice must not be of a description, or relate to an investment of a description, specified in an order made by the Treasury¹⁷. The regulated activities must be the only regulated activities carried on by the practice other than regulated activities in relation to which it is an exempt person¹⁸. If a practice is in breach of the foregoing rules the Council may impose a condition on the licence of the principals of the practice which may include the withdrawal of permission to provide regulated activities¹⁹. A practice must not carry on, nor hold itself out as carrying on, a regulated activity other than one which is permitted by these rules²⁰ or one in relation to which it is an exempt person²¹. Nor must a practice carry on any insurance mediation activity²² unless it is included in the insurance intermediaries register²³.

A practice and all of its principals must at all times comply with the Financial Services and Markets Act 2000, secondary legislation made under that Act and the Insurance Mediation Directive²⁴, so far as they apply²⁵; and with the terms and provisions of the code of practice²⁶ issued by the Council²⁷.

If it appears to the Council that there has been a contravention of any of the foregoing rules, a principal or a recognised body²⁸ is liable to disciplinary proceedings²⁹.

1 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 2.

2 See **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4.

3 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

4 See the Financial Services and Markets Act 2000 (Designated Professional Bodies) Order 2001, SI 2001/1226, art 2.

5 le the Financial Services and Markets Act 2000 ss 325-333 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 749-757).

6 As to the activities that are regulated see the Financial Services and Markets Act 2000 s 22; the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, SI 2001/544; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 84.

7 See the Financial Services and Markets Act 2000 Pt XX; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 749-757.

8 'Practice' means a licensed conveyancer who is a sole practitioner, two or more licensed conveyancers in partnership, or a recognised body each providing legal services to the public regulated by the Council: Licensed Conveyancers' Designated Professional Body Rules 2004 r 2.2.

9 'General prohibition' means the prohibition imposed by the Financial Services and Markets Act 2000 s 19 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 80) which states that no person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is (1) an authorised person; or (2) an exempt person: Licensed Conveyancers' Designated Professional Body Rules 2004 r 2.2.

10 Licensed Conveyancers' Designated Professional Body Rules 2004 r 3. The general prohibition does not apply as a result of the Financial Services and Markets Act 2000 s 327: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 751.

The Licensed Conveyancers' Designated Professional Body Rules 2004 (27 October 2004) came into force on 14 January 2005 (r 1). They do not apply to a practice that is an authorised person: r 4.

11 'Client' means any person with whom a practice conducts or intends to conduct a regulated activity: Licensed Conveyancers' Designated Professional Body Rules 2004 r 2.2.

12 Licensed Conveyancers' Designated Professional Body Rules 2004 r 5. There must not, however, be in force any order or direction of the Financial Services Authority under the Financial Services and Markets Act 2000 ss 328, 329 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARAS 752-753) in respect of any practice and where such order is in force the Council may withdraw permission without notice: Licensed Conveyancers' Designated Professional Body Rules 2004 r 7.

13 'Principal' means a sole practitioner or any partner or director of a practice: Licensed Conveyancers' Designated Professional Body Rules 2004 r 2.2.

14 Licensed Conveyancers' Designated Professional Body Rules 2004 r 6.1.

15 Licensed Conveyancers' Designated Professional Body Rules 2004 r 6.2.

16 Licensed Conveyancers' Designated Professional Body Rules 2004 r 8.

17 Licensed Conveyancers' Designated Professional Body Rules 2004 r 9. Such orders are made by the Treasury under the Financial Services and Markets Act 2000 s 327(6): see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 751.

18 Licensed Conveyancers' Designated Professional Body Rules 2004 r 10. 'Exempt Person' (as defined in the Financial Services and Markets Act 2000 s 417(1)) in relation to a regulated activity, means a person who is exempt from the general prohibition in respect of that activity: Licensed Conveyancers' Designated Professional Body Rules 2004 r 2.2.

19 Licensed Conveyancers' Designated Professional Body Rules 2004 r 11.

20 le the Licensed Conveyancers' Designated Professional Body Rules 2004.

21 Licensed Conveyancers' Designated Professional Body Rules 2004 r 12.

22 'Insurance mediation activities' means the activities of introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim: Licensed Conveyancers' Designated Professional Body Rules 2004 r 2.2.

23 Licensed Conveyancers' Designated Professional Body Rules 2004 r 13. 'Insurance intermediaries register' means the record maintained by the Financial Services Authority under the Financial Services and Markets Act 2000 s 347: Licensed Conveyancers' Designated Professional Body Rules 2004 r 2.2.

24 The Directive 2002/92/EC of the European Parliament and of the Council (OJ L 9, 15.1.2003, p 3) on insurance mediation: see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 88.

25 Licensed Conveyancers' Designated Professional Body Rules 2004 r 14.

26 As to the code of practice, or conduct, see PARA 1342 et seq.

27 Licensed Conveyancers' Designated Professional Body Rules 2004 r 15.

28 As to recognised bodies see PARA 1392 et seq.

29 Licensed Conveyancers' Designated Professional Body Rules 2004 r 16. A principal is liable to proceedings under the Administration of Justice Act 1985 ss 24, 26 (see PARAS 1359, 1378); a recognised body is liable to proceedings under Sch 6 (see PARA 1402).

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(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS

1326. Training rules.

The Council for Licensed Conveyancers¹ must make rules² relating to the education and training of those seeking to practise as licensed conveyancers³. In particular, the rules must include provisions prescribing (1) the examinations to be taken by such persons⁴; and (2) requirements as to practical training and experience⁵.

Rules so made by the Council may:

- 1892 (a) prescribe minimum standards of general education that must have been attained by persons who seek to practise as licensed conveyancers⁶;
- 1893 (b) provide for the recognition by the Council of courses of study provided by educational institutions or other bodies as being adequate for the purposes of preparing candidates for any examinations held in pursuance of head (1) above⁷;
- 1894 (c) prescribe any education or training to be undergone by persons who are licensed conveyancers and, in this connection, provide for the approval by the Council of courses of study provided by educational institutions or other bodies⁸;
- 1895 (d) include provision for the charging of fees by the Council⁹; and
- 1896 (e) make different provision in relation to different classes of persons¹⁰.

Rules made by the Council may¹¹ provide for persons to be exempt from any of the requirements of the rules if they:

- 1897 (i) hold such qualifications; or
- 1898 (ii) have acquired such experience in relation to the provision of conveyancing services¹²; or
- 1899 (iii) satisfy such other conditions,

as may be specified in the rules¹³.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Any rules made by the Council under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1327 et seq) must be made with the concurrence of the Secretary of State: s 38(1) (amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 6(a)). Any such rules may make different provision for different circumstances; and without prejudice to the generality of this provision, any rules prescribing a fee may provide for that fee to be reduced, or to be waived by the Council, in such circumstances as may be specified in the rules: s 38(2), (3). The making of rules may not be delegated: see PARA 1323 text and note 2. As to the meaning of 'fees' see PARA 1324 note 3. As from a day to be appointed s 38 is amended by the Legal Services Act 2007, ss 182, 210, Sch 17 Pt 1 paras 1, 27, Sch 23 to remove the condition that rules must be made with the concurrence of the Secretary of State. At the date at which this volume states the law no such day had been appointed.

3 Administration of Justice Act 1985 s 13(1). See the Council for Licensed Conveyancers' Training Rules 2004 (5 May 2004) which came into force on 1 September 2004: r 1. As to the use of inclusive language in rules and

regulations made by the Council see PARA 1320 note 9. As to the meaning of 'licensed conveyancer', and as to the meaning of 'practising as a licensed conveyancer', see PARA 1319 note 3.

4 Administration of Justice Act 1985 s 13(1)(a). See the Council for Licensed Conveyancers' Training Rules 2004 r 4. The Council may appoint, or approve the appointment of, persons as examiners or moderators in connection with examinations held in pursuance of s 13(1)(a) and may remunerate any persons so appointed by it: s 13(5).

5 Administration of Justice Act 1985 s 13(1)(b). See the Council for Licensed Conveyancers' Training Rules 2004 r 5. Rules under s 13(1)(b) may provide (1) for the manner in which a person may satisfy the Council that he has complied with any requirement of the rules as to practical experience; and (2) for attendance by a person at a training course approved by the Council for the purposes of the rules to count as practical training for those purposes: s 13(3).

6 Administration of Justice Act 1985 s 13(2)(a).

7 Administration of Justice Act 1985 s 13(2)(b).

8 Administration of Justice Act 1985 s 13(2)(c).

9 Administration of Justice Act 1985 s 13(2)(d).

10 Administration of Justice Act 1985 s 13(2)(e).

11 le without prejudice to the generality of the Administration of Justice Act 1985 s 13(2)(e) (see head (e) in the text): s 13(4).

12 As to the meaning of 'conveyancing services' see PARA 1319 note 2.

13 Administration of Justice Act 1985 s 13(4). A solicitor holding a current practising certificate is entitled to apply for exemption from the Council for Licensed Conveyancers' Training Rules 2004 in order to apply for a licence and convert from a solicitor to a licensed conveyancer: see the Council for Licensed Conveyancers Guidance for Solicitors Converting to Licensed Conveyancers. As to solicitors' practising certificates see PARA 667 et seq.

UPDATE

1326 Training rules

NOTE 2--Day appointed is 1 January 2010: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1327. Applications for licences.

1327. Applications for licences.

An application for a licence¹ to practise as a licensed conveyancer² must be made to the Council for Licensed Conveyancers³ in such manner and accompanied by such fee⁴ as may be prescribed by rules⁵ made by the Council⁶. Any such rules may (1) prescribe the forms to be used in connection with applications for licences; and (2) provide for applications of any description specified in the rules to be exempt from any of their requirements⁷.

No person is entitled to apply for a licence for the first time unless he is a fit and proper person to practise as a licensed conveyancer and has either passed the Council's qualifying examination, completed at least two years' practical training, and in respect of any period exceeding three months following the conclusion of his practical training, provided to the satisfaction of the Council evidence of having undergone relevant conveyancing experience⁸; or demonstrated to the satisfaction of the Council, in accordance with such terms and conditions as it may prescribe, that he has the relevant educational and professional qualifications and experience in the provision of conveyancing services⁹.

Every licence must be either a limited licence¹⁰ or a full licence¹¹ and must be in such form as the Council may from time to time prescribe¹². An application for a licence is deemed to have been made on the day on which the applicant has complied fully and finally with the relevant requirements¹³. In considering an application for a licence the Council may, at its discretion, require the applicant to attend for interview¹⁴. If the Council is not satisfied that the relevant requirements have been satisfied or, with or without having interviewed the applicant, that the applicant is a fit and proper person to practise as a licensed conveyancer, it may refuse an application for a licence¹⁵.

1 As to the meaning of 'licence' see PARA 1319 note 3.

2 As to the meaning of 'licensed conveyancer', and as to the meaning of 'practising as a licensed conveyancer', see PARA 1319 note 3.

3 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

4 As to the meaning of 'fees' see PARA 1324 note 3.

5 As to the making of rules generally see PARA 1326 note 2.

6 Administration of Justice Act 1985 s 14(1).

7 Administration of Justice Act 1985 s 14(2). See the Council for Licensed Conveyancers' Licensing Rules 2007 (17 January 2007) which came into force on 30 September 2007: r 1.1. As to the use of inclusive language in rules and regulations made by the Council see PARA 1320 note 9.

8 Licensed Conveyancers' Licensing Rules 2007 r 2.1(a). As to the qualifying examination and practical training see PARA 1326.

9 Licensed Conveyancers' Licensing Rules 2007 r 2.1(b).

10 The holder of a limited licence is licensed to offer conveyancing services as an employed licensed conveyancer only and a limited licence must be so indorsed by the Council. A full licence automatically becomes a limited licence when the holder of a full licence has failed to comply with the rules made under the Administration of Justice Act 1985 s 21 (see PARA 1348): Licensed Conveyancers' Licensing Rules 2007 r 2.4. An applicant for a limited licence must deliver or cause to be delivered to the Council's offices: (1) a written

application in the form prescribed by and obtained from the Council, correctly completed and signed by the applicant; (2) the fee payable; (3) any contribution which the Council may require an applicant to make to any fund or funds as to professional indemnity and compensation maintained by the Council by virtue of the Administration of Justice Act 1985 s 21(3)(a); and (4) any report, certificate or other document as the Council may require: Licensed Conveyancers' Licensing Rules 2007 r 2.5.

11 The holder of a full licence is licensed to offer conveyancing services directly to the public and a full licence must be so indorsed by the Council: Licensed Conveyancers' Licensing Rules 2007 r 2.3. In addition to the requirements of an application for a limited licence (see note 10) an applicant for a full licence must deliver or cause to be delivered to the Council's offices: (1) evidence of appropriate and current insurance cover as required by the Licensed Conveyancers' Indemnity Rules 2005 (see PARA 1349); (2) such further or composite contribution which the Council requires an applicant to make to any fund or funds as to professional indemnity and compensation maintained by the Council by virtue of the Administration of Justice Act 1985 s 21(3) (see PARA 1348); (3) in the case of an application for a full licence while a limited licence is current, the additional fee; and (4) where applicable, evidence that the Applicant has satisfied the requirements of the Licensed Conveyancers' Conduct Rules 2005 r 4.3.1 (see PARA 1344): Licensed Conveyancers' Licensing Rules 2007 r 2.6.

12 Licensed Conveyancers' Licensing Rules 2007 r 2.2. A licensed conveyancer may, when applying for a licence, apply in addition for a duplicate licence which, if issued, is free of charge; he may also apply for a duplicate licence at any other time and on tendering the fee payable, and the Council may issue such a licence: Licensed Conveyancers' Licensing Rules 2007 r 2.10.

13 Licensed Conveyancers' Licensing Rules 2007 r 2.7. As to the relevant requirements see notes 10, 11.

14 Licensed Conveyancers' Licensing Rules 2007 r 2.8.

15 Licensed Conveyancers' Licensing Rules 2007 r 2.9. As to the relevant requirements see notes 10, 11.

UPDATE

1327 Applications for licences

TEXT AND NOTES 7-15--Licensed Conveyancers' Licensing Rules 2007 r 2 now Licensed Conveyancers' Licensing Rules 2009 r 2, with the removal of the distinction between a limited licence and a full licence. A licensed conveyancer may apply to the Council for the removal or variation of conditions on a licence: r 5. If the Council refuses an application for a licence or refuses to remove or vary the conditions of a licence, the applicant or licensed conveyancer may appeal: r 6.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1328. Issue of licences by the Council.

1328. Issue of licences by the Council.

The Council for Licensed Conveyancers¹ must issue an applicant for a licence² either with a licence free of conditions or with a licence subject to such conditions as may be imposed³ if the Council is satisfied:

- 1900 (1) that the applicant has complied with such rules⁴ regarding training (if any) as are applicable in his case; and
- 1901 (2) that he has made adequate arrangements for the purpose of complying with any rules⁵ made regarding professional indemnity; and
- 1902 (3) that he is a fit and proper person to practise as a licensed conveyancer⁶ or, in the case of an applicant to whom a conditional licence is issued⁷, that he is a fit and proper person to practise as such a conveyancer subject to his complying with any particular conditions that may be imposed on the licence⁸;

and provided that the application is duly⁹ made¹⁰.

A licence is in force for a period of 12 months beginning with the date of its issue¹¹.

Where an application for a licence is duly made by a person who, at the date of the application, already holds a licence, and no new licence is issued to him in pursuance of the application before the time when his existing licence would otherwise expire¹², his existing licence does not expire at that time but continues in force until a new licence is issued to him in pursuance of the application or, if the application is refused by the Council, (a) until the end of the period within which an appeal may be brought against the refusal¹³; or (b) if such an appeal is brought, until the appeal is determined or abandoned¹⁴.

Where an applicant for a licence has held such a licence at any time within the period of 12 months ending with the date of his application, any licence granted to him in pursuance of the application is deemed to have been issued on the day following the date when his previous licence expired¹⁵ or would have so expired¹⁶ and accordingly to have been held by him as from that day¹⁷.

A licence so issued may be indorsed by the Council as (i) a full licence, if the Council is satisfied that the person to whom it is issued has complied or will comply with the requirements made with respect to professional indemnity and compensation¹⁸; or (ii) as a limited licence, if the Council is not so satisfied¹⁹.

The licence issued to a licensed conveyancer remains the property of the Council until it expires²⁰. Any full or limited licence may, at the time of its grant or subsequently, be indorsed with any condition which the Council may impose²¹.

When, during the currency of a full licence, the licensed conveyancer either ceases to comply with any rules made by the Council²² relating to insurance or for any other reason ceases to be eligible to hold a full licence, he must immediately surrender the licence and any duplicate licence issued to him by delivering them or causing them to be delivered to the Council's offices.²³

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

- 2 As to the meaning of 'licence' see PARA 1319 note 3.
- 3 le imposed under the Administration of Justice Act 1985 s 16: see PARA 1330.
- 4 le rules under the Administration of Justice Act 1985 s 13: see PARA 1326. As to the making of rules generally see PARA 1326 note 2.
- 5 le rules made under or for the purpose of the Administration of Justice Act 1985 s 21(1): see PARA 1348.
- 6 As to the meaning of 'licensed conveyancer', and as to the meaning of 'practising as a licensed conveyancer', see PARA 1319 note 3.
- 7 le an applicant in relation to whom the Administration of Justice Act 1985 s 16 (see PARA 1330) has effect: Administration of Justice Act 1985 s 15(1)(c).
- 8 Administration of Justice Act 1985 s 15(1)(a)-(c).
- 9 le made under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1329 et seq) in accordance with s 14 (see PARA 1327): s 15(1).
- 10 Administration of Justice Act 1985 s 15(1).
- 11 Administration of Justice Act 1985 s 15(4). As from a day to be appointed s 15(4) is amended by the Legal Services Act 2007 s 182, Sch 17, Pt 1, paras 1, 4(1), (3) to change the period for which a licence is in force from 12 months to such period as may be specified on the licence. At the date at which this volume states the law no such day had been appointed.
- 12 le in accordance with the Administration of Justice Act 1985 s 15(4): see the text and note 11.
- 13 le under the Administration of Justice Act 1985 s 29(1)(a): see PARA 1381.
- 14 Administration of Justice Act 1985 s 15(5).
- 15 See note 12.
- 16 le but for the Administration of Justice Act 1985 s 15(5): see the text and notes 12-14.
- 17 Administration of Justice Act 1985 s 15(6).
- 18 See PARA 1348 et seq.
- 19 Administration of Justice Act 1985 s 15(7) (added by the Courts and Legal Services Act 1990 s 53(7), Sch 8 para 23). Rules made under the Administration of Justice Act 1985 s 21 (see PARA 1348 et seq) may make provision for the making or removal of indorsements while a licence is in force and for the recording of any such indorsement or of its removal in the register maintained under s 19 (see PARA 1333): s 15(8).
As from a day to be appointed s 15(7), (8) is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17, Pt 1, paras 1, 4(1), (4), Sch 23. At the date at which this volume states the law no such day had been appointed. Notwithstanding the repeal of the Administration of Justice Act 1985 s 15(7), (8) a licence so indorsed, and rules so made continue to have effect until the licence expires: see the Legal Services Act 2007 Sch 22 para 7.
- 20 Licensed Conveyancers' Licensing Rules 2007 r 3.1. As to the meaning of 'full licence' and 'limited licence' for these purposes see PARA 1327 notes 10, 11.
- 21 Licensed Conveyancers' Licensing Rules 2007 r 3.2. Any such condition may be removed at the Council's discretion: r 3.2. See further PARAS 1330-1331.
- 22 le the Licensed Conveyancers' Indemnity Rules 2005: see PARA 1348 et seq.
- 23 Council for Licensed Conveyancers' Licensing Rules 2007 r 3.5. As to the suspension or termination of licences see PARA 1332.

UPDATE

1328 Issue of licences by the Council

NOTES 11, 19--Day appointed is 31 March 2009: SI 2009/503.

TEXT AND NOTES 20-23--Licensed Conveyancers' Licensing Rules 2007 rr 3.1, 3.2, 3.5 now
Licensed Conveyancers' Licensing Rules 2009 rr 3.1, 3.2, 3.5.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1329. Refusal of applications for licences.

1329. Refusal of applications for licences.

If the Council for Licensed Conveyancers¹ is for any reason not satisfied as to the specified matters² it must refuse the application for a licence³ and notify⁴ the applicant of the refusal of the application and the grounds on which it has been refused⁵. Where (1) an application for a licence has been duly made⁶; and (2) the Council has within the period of 21 days beginning with the date when it received the application neither issued a licence nor refused the application under the above provision, then the application is deemed to have been refused by the Council and the applicant is deemed to have been notified of the refusal at the end of the specified period⁷.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Ie satisfied as to the matters set out in the Administration of Justice Act 1985 s 15(1): see PARA 1328.

3 Ie the application for a licence under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1330 et seq) made in accordance with s 14 (see PARA 1327): s 15(2). As to the meaning of 'licence' see PARA 1319 note 3.

4 Any notice or other document authorised or required to be given or served under the Administration of Justice Act 1985 Pt II may be sent by post; and for the purpose of the application to this provision of the Interpretation Act 1978 s 7 (service by post) the proper address of a licensed conveyancer is the address of any place specified in the register as his place of business or one of his places of business: Administration of Justice Act 1985 s 37. As to the meaning of 'licensed conveyancer' see PARA 1319 note 3; and as to the register see PARA 1333.

5 Administration of Justice Act 1985 s 15(2).

6 Ie in accordance with the Administration of Justice Act 1985 s 14 (see PARA 1327): s 15(3)(a).

7 Administration of Justice Act 1985 s 15(3). As from a day to be appointed s 15(3) is amended by the Legal Services Act 2007 s 182, Sch 17, Pt 1, paras 1, 4(2) to change the 21-day period to a 42-day period. At the date at which this volume states the law no such day had been appointed.

UPDATE

1329 Refusal of applications for licences

NOTE 7--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1330. Conditional licences.

1330. Conditional licences.

The following provisions have effect in any case where a person applies for a licence¹:

- 1903 (1) for the first time²;
- 1904 (2) when each licence previously held by him has been subject to conditions³;
- 1905 (3) when, on the first day of the period to which the licence would (if granted) relate, a period of 12 months or more will have elapsed since he last held a licence⁴;
- 1906 (4) after the Discipline and Appeals Committee⁵ has made any order in his case in disciplinary proceedings⁶;
- 1907 (5) after he has been invited by the Council for Licensed Conveyancers⁷ to give an explanation in respect of any matter relating to his conduct and has failed to give an explanation in respect of that matter which the Council regards as satisfactory, and has been notified⁸ in writing by the Council that he has so failed⁹;
- 1908 (6) while he is an undischarged bankrupt¹⁰;
- 1909 (7) after having been adjudged bankrupt and discharged or after having entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors¹¹;
- 1910 (8) while he is a person suffering from mental disorder in relation to whom a judge's emergency powers have been exercised¹²;
- 1911 (9) after having been committed to prison in civil proceedings¹³;
- 1912 (10) after having been convicted of an offence involving dishonesty or deception or an indictable offence¹⁴; or
- 1913 (11) after having had given against him any judgment¹⁵ which involves the payment of money¹⁶.

As from a day to be appointed the following provisions also have effect in any case where a person applies for a licence¹⁷:

- 1914 (a) after the Investigating Committee¹⁸ has made any relevant order in his case¹⁹;
- 1915 (b) when, having been required²⁰ to deliver to the Council a report by an accountant, he has not delivered such a report within the period required by the rules²¹;
- 1916 (c) after having been disqualified from being a manager or employee of a licensed body etc²²;
- 1917 (d) after his holding of a restricted interest in a licensed body has been approved subject to conditions²³ or objected to²⁴.

At the date at which this volume states the law no such day had been appointed.

In any such case, the Council may, on issuing a licence to the applicant²⁵, issue it subject to such conditions as it thinks fit²⁶. In particular, conditions may be imposed (i) for restricting the kinds of conveyancing services²⁷ that may be provided by the applicant as a licensed conveyancer²⁸; or (ii) for requiring the applicant to take any specified steps that will, in the

Council's opinion, be conducive to his carrying on an efficient practice as a licensed conveyancer²⁹.

Where the Council decides to issue an applicant with a licence subject to conditions, it may, if it thinks fit, direct that the conditions are not to have effect pending the hearing and determination of certain appeals³⁰.

1 le under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1331 et seq): s 16(1). As to the meaning of 'licence' see PARA 1319 note 3.

Where a licence free of conditions is issued by the Council under the Administration of Justice Act 1985 s 15 (see PARA 1328) to an applicant in relation to whom the Administration of Justice Act 1985 s 16 has effect by reason of any such circumstances as are mentioned in s 16(1)(d), (e), (f), (g), (h), (i) or (j) (see text and notes 6-13, 15, 16), and as from a day to be appointed, by s 16(1)(ca), (ea), (eb), (ec) (as prospectively added: see note 17) then, except in the case of any circumstances of whose existence the Council is unaware at the time the licence is issued, s 16 does not thereafter have effect in relation to that person by reason of those circumstances: s 16(4). At the date at which this volume states the law no such day had been appointed.

2 Administration of Justice Act 1985 s 16(1)(a).

3 Administration of Justice Act 1985 s 16(1)(b).

4 Administration of Justice Act 1985 s 16(1)(c).

5 le established under the Administration of Justice Act 1985 s 25: see PARA 1362.

6 Administration of Justice Act 1985 s 16(1)(d). The order referred to is any under s 26: see PARA 1378.

7 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

8 As to the service of notices see PARA 1329 note 4.

9 Administration of Justice Act 1985 s 16(1)(e). As from a day to be appointed, where a person applies for a licence at a time when s 16 (see notes 25-30) has effect in relation to him by reason of the circumstances mentioned in s 16(1)(ea), the application must be accompanied by an additional fee of an amount prescribed by rules made by the Council for the purposes of this section: s 16A (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 6). At the date at which this volume states the law no such day had been appointed.

10 Administration of Justice Act 1985 s 16(1)(f) (amended by the Insolvency Act 1985 s 235(1), (3), Sch 8 para 40, Sch 10 Pt III).

11 Administration of Justice Act 1985 s 16(1)(g) (amended by the Insolvency Act 1985 s 235(1), (3), Sch 8 para 40, Sch 10 Pt III). See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

12 Administration of Justice Act 1985 s 16(1)(h). Section 16 refers to the Mental Health Act 1983 s 98 which is repealed and replaced by the Mental Capacity Act 2005: see **MENTAL HEALTH**.

13 Administration of Justice Act 1985 s 16(1)(i) (substituted by the Courts and Legal Services Act 1990 s 53(7), Sch 8 para 24).

14 Administration of Justice Act 1985 s 16(1)(ia) (added by the Courts and Legal Services Act 1990 s 53(7), Sch 8 para 24; amended by the Serious Organised Crime and Police Act 2005 s 111, Sch 7 Pt 3 para 44). As to what constitutes an indictable offence see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1102 et seq.

15 This does not include a judgment (1) limited to the payment of costs; or (2) as to the whole effect of which on him he is entitled to indemnity or relief from some other person; or (3) if evidence of its satisfaction has been produced to the Council: Administration of Justice Act 1985 s 16(1)(j).

16 Administration of Justice Act 1985 s 16(1)(j).

17 The Administration of Justice Act 1985 s 16(1)(ca), (ea), (eb), (ec) are prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 5(1), (2).

18 le established under the Administration of Justice Act 1985 s 24: see PARA 1359.

- 19 Administration of Justice Act 1985 s 16(1)(ca) (as prospectively added: see note 17). A relevant order is made under s 24A: see PARA 1361.
- 20 le required by rules made under the Administration of Justice Act 1985 s 22: see PARA 1353.
- 21 Administration of Justice Act 1985 s 16(1)(ea) (as prospectively added: see note 17).
- 22 Administration of Justice Act 1985 s 16(1)(eb) (as prospectively added: see note 17). The text refers to disqualification under the Legal Services Act 2007 s 99 (not yet in force): see PARA 1548.
- 23 le under the Legal Services Act 2007 Sch 13 para 17, 28 or 33 (not yet in force) (ownership of licensed bodies): see PARAS 1528, 1533, 1535.
- 24 Administration of Justice Act 1985 s 16(1)(ec) (as prospectively added: see note 17). Such an objection is made under the Legal Services Act 2007 Sch 13 para 19, 31 or 36 (not yet in force) (ownership of licensed bodies): see PARAS 1529, 1534, 1536.
- 25 le under the Administration of Justice Act 1985 s 15: see PARA 1328.
- 26 Administration of Justice Act 1985 s 16(2). The Council's decision in any such case to impose any particular conditions may be made by reference to such criteria of general application as may have been determined by the Council: s 16(2). Conditions may be imposed under s 16(2) notwithstanding that they may result in expenditure being incurred by the applicant: s 16(3).
- 27 As to the meaning of 'conveyancing services' see PARA 1319 note 2.
- 28 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.
- 29 Administration of Justice Act 1985 s 16(3). Section 16(3) is without prejudice to the generality of s 16(2) (see the text to notes 25-26): s 16(3).
- 30 Administration of Justice Act 1985 s 16(5). The appeals mentioned in s 16(5) are (1) any appeal by the applicant under s 29(1)(b) (see PARA 1381); or (2) if s 16 (as amended: see note 10) has effect in relation to the applicant by reason only of any such circumstances as are mentioned in s 16(1)(f) or (i) (as so amended and substituted) or s 16(1)(j), an appeal to the appropriate court against the order or judgment in question: s 16(5). As from a day to be appointed s 16(5) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 5(1), (4) to include the following appeals:
- 562 (1) any appeal brought by the applicant under the Legal Services Act 2007 Sch 13 para 18, 20, 29, 32, 34 or 37 (not yet in force: see PARAS 1528-1529, 1533-1536) (Administration of Justice Act 1985 s 16(5)(aa) (as so prospectively added));
- 563 (2) the review by a licensing authority, in accordance with its licensing rules, of a determination that the applicant should be disqualified under the Legal Services Act 2007 s 99 (not yet in force: see PARA 1548) (Administration of Justice Act 1985 s 16(5)(ab) (as so prospectively added)).

At the date at which this volume states the law no such day had been appointed.

UPDATE

1330 Conditional licences

NOTE 1--Day appointed in relation to Administration of Justice Act 1985 s 16(1)(ea) is 31 March 2009: SI 2009/503.

NOTE 9--Day appointed is 31 March 2009: SI 2009/503.

NOTES 17, 19, 21--Administration of Justice Act 1985 s 16(1)(ca), (ea) in force 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1331. Imposition of conditions during currency of licence.

1331. Imposition of conditions during currency of licence.

The Council for Licensed Conveyancers¹ may in the case of any licensed conveyancer² direct that his licence³ is to have effect subject to such conditions as the Council thinks fit⁴. The power to give such a direction in the case of any licensed conveyancer is exercisable at any time during the period for which his licence is in force if (1) in the event of an application for a licence being made by him at that time, the statutory provisions⁵ relating to conditional licences would apply to him by reason of the specified circumstances⁶; or (2) he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors⁷.

The conditions specified in such a direction have effect as from the time when the licensed conveyancer concerned is notified⁸ of the Council's decision to give the direction⁹. If, however, the Council thinks fit, it may provide in a direction so given that the conditions specified in it are not to have effect pending the hearing and determination of certain appeals¹⁰.

As from a day to be appointed, where a licensed conveyancer's licence has conditional effect the Council may, in prescribed circumstances¹¹, and on an application made by the licensed conveyancer, direct the removal of a condition, or its variation in the manner described in the application¹². At the date at which this volume states the law no such day had been appointed.

Where any conditions are imposed, amended or removed during the currency of a licence, the licensed conveyancer must immediately upon request submit his licence to the Council for indorsement, amendment or removal¹³. When during the currency of a limited licence the Council agrees to the removal or amendment of all or any of the conditions imposed on it, those conditions remain effective until such time as the licence is delivered to the Council's offices together with the fee payable for making such an amendment¹⁴.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

3 As to the meaning of 'licence' see PARA 1319 note 3.

4 Administration of Justice Act 1985 s 17(1). As to the conditions which may be imposed under s 17(1) see s 16(3) (applied by s 17(5)); and PARA 1330.

5 I.e. the Administration of Justice Act 1985 s 16: see PARA 1330.

6 I.e. any such circumstances as are mentioned in the Administration of Justice Act 1985 s 16(1)(d), (e), (i) or (j) (and as from a day to be appointed s 16(1)(ca), (ea), (eb), (ec). At the date at which this volume states the law no such day had been appointed): see PARA 1330.

7 Administration of Justice Act 1985 s 17(2) (amended by the Insolvency Act 1985 s 235(3), Sch 10 Pt III; and prospectively amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 7). As to arrangements with creditors see generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

8 As to the service of notices see PARA 1329 note 4.

9 Administration of Justice Act 1985 s 17(3).

10 Administration of Justice Act 1985 s 17(4). The appeals mentioned in s 17(4) are (1) any appeal brought by the licensed conveyancer under s 29(1)(c) (see PARA 1381); or (2) an appeal made by the licensed

conveyancer to the appropriate court against any order or judgment which, if successful, would result in s 17(2) (as amended: see note 7) no longer being applicable to him: s 17(4).

As from a day to be appointed s 17(4) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 7(1), (3) to include the following appeals:

- 564 (1) any appeal brought by the applicant under the Legal Services Act 2007 Sch 13, para 18, 20, 29, 32, 34 or 37 (not yet in force: see PARAS 1528-1529, 1533-1536 et seq) (Administration of Justice Act 1985 s 17(4)(aa) (as so prospectively added));
- 565 (2) the review by a licensing authority, in accordance with its licensing rules, of a determination that the applicant should be disqualified under the Legal Services Act 2007 s 99 (not yet in force: see PARA 1548) (Administration of Justice Act 1985 s 17(4)(ab) (as so prospectively added)).

At the date at which this volume states the law no such day had been appointed.

11 The circumstances prescribed by rules made by the Council: Administration of Justice Act 1985 s 17A(3) (as prospectively added: see note 12).

12 Administration of Justice Act 1985 s 17A(1), (2) (s 17A prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 8). The Administration of Justice Act 1985 s 14 (applications for licences) (see PARA 1327) applies in relation to an application under this section as it applies in relation to applications for a licence under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1332 et seq): s 17A(4) (as so prospectively added).

13 Licensed Conveyancers' Licensing Rules 2007 r 3.3. The Council must also record the indorsement or amendment in, or the removal of the indorsement from, the register maintained under the Administration of Justice Act 1985 s 19 (see PARA 1333): Licensed Conveyancers' Licensing Rules 2007 r 3.3.

14 Licensed Conveyancers' Licensing Rules 2007 r 3.4.

UPDATE

1331 Imposition of conditions during currency of licence

NOTE 6--Day appointed in relation to Administration of Justice Act 1985 s 16(1)(ca), (ea) is 31 March 2009: SI 2009/503.

NOTE 12--Administration of Justice Act 1985 s 17A in force 31 March 2009: SI 2009/503.

TEXT AND NOTES 13, 14--Licensed Conveyancers' Licensing Rules 2007 rr 3.3, 3.4 now Licensed Conveyancers' Licensing Rules 2009 rr 3.3, 3.4.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1332. Suspension or termination of licences.

1332. Suspension or termination of licences.

Where an adjudication in bankruptcy¹ is made against a licensed conveyancer², any such adjudication operates immediately to suspend the licence³ held⁴ by that person; and the suspension continues until the licence expires⁵. The suspension of a licence by virtue of this provision terminates, however, if the adjudication in question is annulled and an office copy of the order annulling the adjudication is served⁶ on the Council for Licensed Conveyancers⁷.

As from a day to be appointed the following provisions also have effect⁸.

Where the Council exercises certain powers with regard to the recovery of sums of money or production or delivery of documents⁹ in relation to a licensed conveyancer, the exercise of that power operates immediately to suspend any licence held by that person¹⁰. Where a licence is so suspended the suspension of the licence continues until the licence expires¹¹, although the licensed conveyancer concerned may, at any time before the licence expires, apply to the Council to terminate the suspension¹². At the date at which this volume states the law no such day had been appointed.

A licence is terminated if the person holding it becomes a person who lacks capacity within the meaning of the Mental Capacity Act 2005¹³.

For the purposes of the statutory provisions relating to licensed conveyancers¹⁴, a licence is treated as not being in force at any time while it is suspended by virtue of any such provision¹⁵.

Where a licence ceases to be in force, whether because it is suspended or the licensed conveyancer concerned is disqualified from holding such a licence or for any other reason, any advocacy¹⁶, litigation¹⁷ or probate licence¹⁸ in force with respect to that licensed conveyancer at the time ceases to have effect to the same extent as the licence with respect to conveyancing services¹⁹.

1 See generally **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

2 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

3 As to the meaning of 'licence' see PARA 1319 note 3.

4 I.e. under the Administration of Justice Act 1985 Pt II (ss 11-39): see PARAS 1319 et seq, 1333 et seq.

5 Administration of Justice Act 1985 s 18(1).

6 As to the service of notices see PARA 1329 note 4.

7 Administration of Justice Act 1985 s 18(2). As to the Council for Licensed Conveyancers see PARA 1320 et seq.

8 As from a day to be appointed the Administration of Justice Act 1985 s 18(2A)-(2H) is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 9. At the date at which this volume states the law no such day had been appointed.

9 I.e. powers under the Administration of Justice Act 1985 Sch 5 paras 6(1), 9(1) (see PARAS 1385, 1386), which have been exercised by virtue of para 1(1)(a)(i), (aa), (c) or (e) (see PARA 1384): s 18(2A) (as prospectively added: see note 8).

10 Administration of Justice Act 1985 s 18(2A) (as prospectively added: see note 8). Section 18(2A) does not apply if, at the time the relevant power was exercised, the Council directs that it should not apply in relation to the licensed conveyancer concerned: s 18(2B) (as so prospectively added). Equally, if, at the time when the relevant power is exercised, the Council may give a direction to the effect that the licensed conveyancer concerned may continue to act in relation to any matter specified in the direction as if the licence had not been suspended, but subject to such conditions (if any) as the Council sees fit to impose: s 18(2C) (as so prospectively added).

11 Administration of Justice Act 1985 s 18(2D) (as prospectively added: see note 8).

12 Administration of Justice Act 1985 s 18(2E) (as prospectively added: see note 8). On such an application the Council may in its discretion by order terminate the suspension either unconditionally or subject to such conditions as the Council may think fit, or refuse the application: s 18(2F) (as so prospectively added). If the Council refuses the application or terminates the suspension subject to conditions, the licensed conveyancer may appeal against the decision to the High Court which may either affirm the decision, or terminate the suspension either unconditionally or subject to such conditions as it may think fit, and may make such order as it thinks fit as to payment of costs: s 18(2G), (2H) (as so prospectively added).

13 Administration of Justice Act 1985 s 18(3) (amended by the Mental Capacity Act 2005 s 67(1), Sch 6 para 30). As to lack of capacity under the Mental Capacity Act 2005 see s 2 thereof; and **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641.

14 In the Administration of Justice Act 1985 Pt II: s 18(4).

15 Administration of Justice Act 1985 s 18(4). For other provisions relating to suspension of licences see s 24(5) (and PARA 1359), s 26(1), (2)(c) (and PARA 1378). Where a licensed conveyancer's licence has been suspended or terminated in accordance with s 18, certain powers of intervention in his practice may be exercised: see s 31(1), Sch 5 para 1(1)(h)(i); and PARA 1384.

16 'Advocacy licence' means a licence issued under the Courts and Legal Services Act 1990 s 53 (see PARA 1335) and constituting the grant by the Council for Licensed Conveyancers to the licensed conveyancer concerned of a right of audience: s 53(7), Sch 8 para 1. As from a day to be appointed Sch 8 para 1 is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (2)(a) so that 'advocacy licence' means a licence issued under s 53 by which the Council authorises the licensed conveyancer concerned to exercise a right of audience. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'right of audience' see PARA 495 note 3.

17 'Litigation licence' means a licence issued under the Courts and Legal Services Act 1990 s 53 and constituting the grant by the Council to the licensed conveyancer concerned of a right to conduct litigation: Sch 8 para 1. As from a day to be appointed Sch 8 para 1 is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 2, paras 33, 35(1), (2)(b) so that 'litigation licence' means a licence issued under s 53 by which the Council authorises the licensed conveyancer concerned to carry on activities which constitute the conduct of litigation. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'right to conduct litigation' see PARA 495 note 4.

18 'Probate licence' means a licence issued under the Courts and Legal Services Act 1990 s 53 and constituting the grant by the Council to the licensed conveyancer concerned of an exemption under s 55: Sch 8 para 1. As from a day to be appointed Sch 8 para 1 is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 2, paras 33, 35(1), (2)(c) so that 'probate licence' means a licence issued under the Courts and Legal Services Act 1990 s 53 by which the Council authorises the licensed conveyancer concerned to carry on activities which constitute probate activities. At the date at which this volume states the law no such day had been appointed.

19 See the Courts and Legal Services Act 1990 Sch 8 para 8.

UPDATE

1332 Suspension or termination of licences

TEXT AND NOTE 8--Day appointed is 31 March 2009: SI 2009/503.

NOTES 16-18--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1333. Register of licensed conveyancers.

1333. Register of licensed conveyancers.

The Council for Licensed Conveyancers¹ must establish and maintain, in such form as it may determine, a register containing the names and places of business of all persons who for the time being hold licences² to practise as licensed conveyancers³. The Council must accordingly cause the appropriate entries and deletions to be made in the register on the issue and termination of licences; and where any licence held by a person is for the time being suspended by virtue of any statutory provision⁴, the Council must cause that fact to be noted in the register against that person's name⁵.

The Council must provide facilities for making the information contained in the entries in the register available for inspection in visible and legible form by any person during office hours and without payment⁶.

A certificate signed by an officer of the Council appointed for the purpose and stating (1) that any person does or does not, or did or did not, hold a licence⁷; or (2) that any licence held by any person is or was either free of conditions or subject to any particular conditions⁸, is evidence of the facts stated in the certificate, unless the contrary is proved⁹.

Where an advocacy¹⁰, litigation¹¹ or probate licence¹² is in force with respect to a licensed conveyancer, the Council must enter details of the licence in the appropriate place in the register of licensed conveyancers maintained by it under the above provisions¹³. The Council must accordingly cause the appropriate entries to be made on the issue of any such licence and deletions on any such licence ceasing to be in force¹⁴; and where any such licence is for the time being suspended, the Council must cause that fact to be noted in the register against the name of the licensed conveyancer concerned¹⁵.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 I.e. licences in force under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1342 et seq); s 19(1). As to the meaning of 'licence' see PARA 1319 note 3.

3 Administration of Justice Act 1985 s 19(1). Any change in a licensed conveyancer's place or places of business must be notified by him to the Council within the period of 14 days beginning with the date on which the change takes effect: s 19(3). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. As to the list of recognised bodies see PARA 1400. As to the meaning of 'recognised body' see PARA 1392 note 14.

4 I.e. any provision of the Administration of Justice Act 1985 Pt II: s 19(2).

5 Administration of Justice Act 1985 s 19(2).

6 Administration of Justice Act 1985 s 19(4).

7 I.e. a licence in force under the Administration of Justice Act 1985 Pt II: s 19(5).

8 As to the power to issue licences subject to conditions see the Administration of Justice Act 1985 s 16; and PARA 1330.

9 Administration of Justice Act 1985 s 19(5). A certificate purporting to be so signed is taken to have been so signed unless the contrary is proved: s 19(5).

10 As to the meaning of 'advocacy licence' see PARA 1332 note 16.

- 11 As to the meaning of 'litigation licence' see PARA 1332 note 17.
- 12 As to the meaning of 'probate licence' see PARA 1332 note 18.
- 13 Courts and Legal Services Act 1990 Sch 8 paras 1, 6(1).
- 14 Courts and Legal Services Act 1990 Sch 8 para 6(2).
- 15 Courts and Legal Services Act 1990 Sch 8 para 6(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(2) TRAINING AND LICENSING OF PERSONS SEEKING TO PRACTISE AS LICENSED CONVEYANCERS/1334. Continuing professional development.

1334. Continuing professional development.

A licensed conveyancer¹ must, in each licence year² in which he holds a licence, complete a prescribed minimum of continuing professional development in recognised courses³. In respect of each licence year in which he holds a licence a licensed conveyancer must inform the Council for Licensed Conveyancers in such form as it may from time to time prescribe whether or not he has complied with the Council's requirements for continuing professional development as they apply to him⁴, and must keep an up to date training record⁵ which he must send to the Council on demand or produce to any person appointed by the Council⁶.

Where a licensed conveyancer fails to comply with the foregoing rules⁷, the Council may refuse to renew his licence or may issue the licence subject to conditions⁸. In an individual case the Council may, where satisfied that the person concerned has undergone sufficient continuing professional development in the current year, vary the operation of these rules in such ways as it thinks fit⁹, and has the power to require a licensed conveyancer to attend a stated course notwithstanding that he may at that time have satisfied the minimum requirements¹⁰ for the current year¹¹.

1 'Licensed conveyancer' means any person holding a licence in force granted by the Council for Licensed Conveyancers: Licensed Conveyancers' Continuing Professional Development Rules 2004 r 1.2.2. 'Licence' means a licence to practise as a licensed conveyancer and 'full licence' and 'limited licence' mean respectively a licence so indorsed by the Council under its licensing rules: r 1.2.2. As to the Council for Licensed Conveyancers see PARA 1320 et seq. As to the licensing rules see PARA 1327 et seq.

2 'Licence year' means the period from 1 November to the following 31 October or such other 12 month period as the Council may prescribe: Licensed Conveyancers' Continuing Professional Development Rules 2004 r 1.2.2.

3 See the Licensed Conveyancers' Continuing Professional Development Rules 2004 rr 2.1, 2.2. A licensed conveyancer must complete a minimum of six hours in each licence year that he holds a limited licence, and a minimum of 12 hours in each licence year that he holds a full licence: rr 2.1, 2.2. The latter requirement prevails where a full licence takes effect immediately upon the expiration of a limited licence: r 2.2. 'Recognised course' means a course, lecture, seminar or other programme or activity approved or run by the Council: r 1.2.2. The Council has the power to approve courses of study provided by educational institutions and other bodies, and may provide its own courses of study for the purposes and may prescribe and charge a fee to a licensed conveyancer who is obliged to attend or who applies to attend or undertake such a course: see rr 3.3, 3.5.

The Licensed Conveyancers' Continuing Professional Development Rules 2004 were made on 27 October 2004 by the Council for Licensed Conveyancers with the concurrence of the Lord Chancellor pursuant to the Administration of Justice Act 1985 ss 13, 38: see the Licensed Conveyancers' Continuing Professional Development Rules 2004; and PARA 1334. As to the use of inclusive language in rules and regulations made by the Council see PARA 1320 note 9.

4 Licensed Conveyancers' Continuing Professional Development Rules 2004 r 2.3.

5 'Training record' means a written record of recognised courses attended or undertaken for the purposes of the Licensed Conveyancers' Continuing Professional Development Rules 2004 in such form as the Council may from time to time prescribe: r 1.2.2.

6 Licensed Conveyancers' Continuing Professional Development Rules 2004 r 2.4.

7 I.e the Licensed Conveyancers' Continuing Professional Development Rules 2004 rr 2.1-2.4: see the text and notes 1-6.

- 8 Licensed Conveyancers' Continuing Professional Development Rules 2004 r 3.1.
- 9 Licensed Conveyancers' Continuing Professional Development Rules 2004 r 3.2.
- 10 See note 3.
- 11 Licensed Conveyancers' Continuing Professional Development Rules 2004 r 3.4.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(3) AUTHORISATION IN RESPECT OF OTHER LEGAL SERVICES/1335. Right to apply for authorisation to grant rights of audience and rights to conduct litigation.

(3) AUTHORISATION IN RESPECT OF OTHER LEGAL SERVICES

1335. Right to apply for authorisation to grant rights of audience and rights to conduct litigation.

Until a day to be appointed the Council for Licensed Conveyancers¹ has the powers necessary to enable it to become an authorised body² for the purposes of granting rights of audience and rights to conduct litigation³. The Council may exercise these powers only with respect to persons who are licensed conveyancers⁴.

Where the Council becomes such an authorised body and grants any right of audience or right to conduct litigation, it must do so by issuing a licence⁵ to the licensed conveyancer to whom the right is being granted⁶.

The Council's general duty includes the duty to ensure that the standards of competence and professional conduct among licensed conveyancers who are granted such rights are sufficient to secure adequate protection for consumers, and that the advocacy⁷ or litigation⁸ provided by such persons are or will be provided both economically and efficiently⁹.

Where the Council exercises any of its powers in connection with an application for authorisation¹⁰, or the granting of any right of audience or right to conduct litigation¹¹, it must do so subject to any requirements to which it is subject in accordance with the relevant statutory provisions¹².

As from a day to be appointed the Council has the powers necessary to enable it to become designated as an approved regulator in relation to one or more of the following reserved legal activities¹³:

- 1918 (1) the exercise of a right of audience¹⁴;
- 1919 (2) the conduct of litigation¹⁵.

If the Council becomes an approved regulator in relation to one or more of those activities, it may, in that capacity, authorise a person to carry on a relevant activity only if the person is a licensed conveyancer¹⁶. Where the Council authorises a licensed conveyancer to carry on a relevant activity, it is to do so by issuing a licence to the licensed conveyancer¹⁷.

Where the Council exercises any of its powers in connection with an application for designation as an approved regulator in relation to a reserved legal activity, or the authorising of a person to carry on a relevant activity, it is to do so subject to any requirements to which it is subject in accordance with the provisions of the Legal Services Act 2007¹⁸.

At the date at which this volume states the law no such day had been appointed.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 I.e. an authorised body for the purposes of granting rights of audience under the Courts and Legal Services Act 1990 s 27(2)(a) (see PARA 497) or rights to conduct litigation under s 28(2)(a) (see PARA 498): s 53(1)(a), (b) (as prospectively substituted: see note 3).

3 Courts and Legal Services Act 1990 s 53(1)(a), (b). As from a day to be appointed the Courts and Legal Services Act 1990 s 53(1)-(3), (6) are prospectively substituted, s 53(5) prospectively repealed, and s 53(1A), (10) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 34. At the date at which this volume states the law no such day had been appointed.

4 Courts and Legal Services Act 1990 s 53(2) (as prospectively substituted: see note 3). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

5 Any such licence may be granted as a separate licence or as part of a composite licence comprising the licensed conveyancer's licence issued under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1342 et seq) and any other licence which the Council may grant to the licensed conveyancer concerned: Courts and Legal Services Act 1990 s 53(4).

6 Courts and Legal Services Act 1990 s 53(3) (as prospectively substituted: see note 3).

7 As to the meaning of 'advocacy services' see PARA 495 note 3.

8 As to the meaning of 'litigation services' see PARA 495 note 4.

9 Courts and Legal Services Act 1990 s 53(5) (as prospectively repealed: see note 3). For further detailed provision consequent on the extension of the Council's powers see s 53(7), Sch 8; and PARA 1338 et seq.

10 Ie under the Courts and Legal Services Act 1990 Sch 4 (see PARA 329 et seq): s 53(6)(a) (amended by the Access to Justice Act 1999 s 43, Sch 6 paras 4, 8; and as prospectively substituted: see note 3).

11 Ie under the Courts and Legal Services Act 1990 s 55: s 53(6)(b) (as prospectively substituted: see note 3).

12 Courts and Legal Services Act 1990 s 53(6) (as prospectively substituted: see note 3). The statutory provisions referred to are those of the Courts and Legal Services Act 1990 relating to the grant of any such right or exemption: see PARA 1337 et seq.

13 Courts and Legal Services Act 1990 s 53(1) (as prospectively substituted: see note 3). Designation as an approved regulator means designation as an approved regulator by the Legal Services Act 2007 Sch 4 Pt 1 by virtue of an order under Sch 22 para 5 (see PARA 303), or under Sch 4 Pt 2 (see PARA 360 et seq): Courts and Legal Services Act 1990 s 53(10)(b) (as prospectively added: see note 3). As to the meaning of 'reserved legal activities' see s 53(10)(a) (as so prospectively added); and PARA 512.

14 Courts and Legal Services Act 1990 s 53(1A)(a) (as prospectively added: see note 3). As to the meaning of 'right of audience' see s 53(10)(a) (as so prospectively added); and PARA 495 note 3.

15 Courts and Legal Services Act 1990 s 53(1A)(b) (as prospectively added: see note 1). As to the meaning of 'conduct of litigation' see s 53(10)(a) (as so prospectively added); and PARA 495 note 4.

16 Courts and Legal Services Act 1990 s 53(2) (as prospectively substituted: see note 3). 'Relevant activity' means an activity which is a reserved legal activity which is within heads (1)-(2) in the text, and in relation to which the Council is designated as an approved regulator by the Legal Services Act 2007 Sch 4 Pt 1 by virtue of an order under Sch 22 para 5 (see PARA 303), or under Sch 4 Pt 2 (see PARA 360 et seq): Courts and Legal Services Act 1990 s 53(10)(c) (as prospectively added: see note 3).

17 Courts and Legal Services Act 1990 s 53(3) (as prospectively substituted: see note 3).

18 Courts and Legal Services Act 1990 s 53(6) (as prospectively substituted: see note 3).

UPDATE

1335-1336 Right to apply for authorisation to grant rights of audience and rights to conduct litigation, Authorisation to provide probate services

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

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1336. Authorisation to provide probate services.

Until a day to be appointed the Council for Licensed Conveyancers¹ is an approved body² for the purposes of granting exemption from the provisions relating to the preparation of probate papers³. The Council may exercise this power only with respect to persons who are licensed conveyancers⁴.

Where the Council grants an exemption relating to the preparation of probate papers, it must do so by issuing a licence⁵ to the licensed conveyancer to whom the exemption is being granted⁶.

The Council's general duty includes the duty to ensure that the standards of competence and professional conduct among licensed conveyancers who are granted such exemption are sufficient to secure adequate protection for consumers, and that the probate services⁷ provided by such persons are or will be provided both economically and efficiently⁸.

Where the Council exercises any of its powers in connection with the granting of an exemption⁹, it must do so subject to any requirements to which it is subject in accordance with the relevant statutory provisions¹⁰.

As from a day to be appointed the Council has the power necessary to enable it to become designated as an approved regulator in relation to probate activities¹¹.

If the Council becomes an approved regulator in relation to that activity, it may authorise a person to carry on probate services only if the person is a licensed conveyancer¹². Where the Council so authorises a licensed conveyancer, it is to do so by issuing a licence to the licensed conveyancer¹³.

Where the Council exercises any of its powers in connection with an application for designation as an approved regulator in relation to a reserved legal activity, or the authorising of a person to carry on a relevant activity, it is to do so subject to any requirements to which it is subject in accordance with the provisions of the Legal Services Act 2007¹⁴.

At the date at which this volume states the law no such day had been appointed.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 The Council for Licensed Conveyancers is an approved body for the purposes of granting, in accordance with the Courts and Legal Services Act 1990 s 55, exemption from the provisions of the Solicitors Act 1974 s 23(1) (see PARA 592): Courts and Legal Services Act 1990 s 53(1)(c); Probate Services (Approved Bodies) Order 2008, SI 2008/1865. As to the meaning of 'probate licence' see PARA 1332 note 18.

3 Courts and Legal Services Act 1990 s 53(1)(c) As from a day to be appointed the Courts and Legal Services Act 1990 s 53(1)-(3), (6) are prospectively substituted, s 53(5) prospectively repealed, and s 53(1A), (10) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 34. At the date at which this volume states the law no such day had been appointed.

See the Licensed Conveyancers' Probate Rules 2008 (16 January 2008) which came into operation on 30 November 2008 (r 1). As to the use of inclusive language in rules and regulations made by the Council see r 1.2; and PARA 1320 note 9.

4 Courts and Legal Services Act 1990 s 53(2) (as prospectively substituted: see note 3). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. See also the Licensed Conveyancers' Probate Rules 2008 r 5.1; and PARA 1339 note 3.

5 Any such licence may be granted as a separate licence or as part of a composite licence comprising the licensed conveyancer's licence issued under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1342 et seq) and any other licence which the Council may grant to the licensed conveyancer concerned: Courts and Legal Services Act 1990 s 53(4).

6 Courts and Legal Services Act 1990 s 53(3) (as prospectively substituted: see note 3). See also the Licensed Conveyancers' Probate Rules 2008 r 5; and PARAS 1339 note 3, and 1340 note 3.

7 As to the meaning of 'probate services' see PARA 427 note 5.

8 Courts and Legal Services Act 1990 s 53(5) (as prospectively repealed: see note 3). For further detailed provision consequent on the extension of the Council's powers see s 53(7), Sch 8; and PARA 1338 et seq. Provision is made for the Council to take out and maintain insurance in the form of a probate master policy and require any probate practice to be appropriately indemnified: see the Licensed Conveyancers' Probate Rules 2008 rr 1.2, 7.

9 le under the Courts and Legal Services Act 1990 s 55: s 53(6)(b) (as prospectively substituted: see note 3).

10 Courts and Legal Services Act 1990 s 53(6) (as prospectively substituted: see note 3). The statutory provisions referred to are those of the Courts and Legal Services Act 1990 relating to the grant of any such right or exemption: see PARA 1337 et seq.

11 Courts and Legal Services Act 1990 s 53(1A)(c) (as prospectively added: see note 3). As to the meaning of 'probate activities' see s 53(10)(a) (as so prospectively added); and PARA 512 note 6. Designation as an approved regulator means designation as an approved regulator by the Legal Services Act 2007 Sch 4, Pt 1, by virtue of an order under Sch 22 para 5 (see PARA 303), or under Sch 4, Pt 2 (see PARA 360 et seq): Courts and Legal Services Act 1990 s 53(10)(b) (as so prospectively added).

12 Courts and Legal Services Act 1990 s 53(2) (as prospectively substituted: see note 3). As to the meaning of 'relevant activity' see also s 53(10)(c); and PARA 1335 note 16.

13 Courts and Legal Services Act 1990 s 53(3) (as prospectively substituted: see note 3). See also note 7.

14 Courts and Legal Services Act 1990 s 53(6) (as prospectively substituted: see note 3).

UPDATE

1335-1336 Right to apply for authorisation to grant rights of audience and rights to conduct litigation, Authorisation to provide probate services

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

1336 Authorisation to provide probate services

NOTE 11--See the Legal Services Act 2007 (Approved Regulators) Order 2007, SI 2007/3233.

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1337. Application of statutory provisions relating to conveyancing services.

The Secretary of State may by order make such amendments of, or modifications to, the provisions of Part II of the Administration of Justice Act 1985¹, or such transitional or consequential provision, as he considers necessary or expedient in connection with the provision made or prospectively made² to enable the Council for Licensed Conveyancers³ to become an authorised and approved body, or designated regulator⁴. Subject to any other relevant statutory provision⁵ or to any order so made by the Lord Chancellor, the provisions of Part II of the Administration of Justice Act 1985 apply with the necessary modifications with respect to:

- 1920 (1) any application for an advocacy⁶, litigation⁷ or probate licence⁸;
- 1921 (2) any such licence⁹;
- 1922 (3) the practice of any licensed conveyancer¹⁰ carried on by virtue of any such licence¹¹;
- 1923 (4) rules made by the Council in connection with rights of audience or rights to conduct litigation, or prospectively made in connection with exemption from the provisions relating to the preparation of probate papers¹²;
- 1924 (5) the management and control by licensed conveyancers (or by licensed conveyancers together with persons who are not licensed conveyancers) of bodies corporate carrying on businesses which include the provision of advocacy¹³, litigation¹⁴ or probate services¹⁵; and
- 1925 (6) any other matter dealt with by the relevant provisions of the Courts and Legal Services Act 1990¹⁶,

as they apply with respect to the corresponding matters dealt with by Part II of the 1985 Act¹⁷.

1 Ie the Administration of Justice Act 1985 Pt II (ss 11-39): see PARAS 1319 et seq, 1342 et seq.

2 Ie by the Courts and Legal Services Act 1990 s 53, Sch 8: see PARA 1335 et seq.

3 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

4 Courts and Legal Services Act 1990 s 53(8) (amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 8(1)(a)). The Council for Licensed Conveyancers (Disciplinary Powers) Order 2001, SI 2001/48, has been made under the Courts and Legal Services Act 1990 s 53(8). As to the meaning of 'authorised body' see PARA 329 note 2. See also PARA 1335. As from a day to be appointed s 53(8) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 2, paras 33, 34 to grant the power to make such orders to the Lord Chancellor. At the date at which this volume states the law no such day had been appointed.

5 Ie any other provisions made by the Courts and Legal Services Act 1990 s 53, Sch 8: s 53(9).

6 As to the meaning of 'advocacy licence' see PARA 1332 note 16.

7 As to the meaning of 'litigation licence' see PARA 1332 note 17.

8 Courts and Legal Services Act 1990 s 53(9)(a). As to the meaning of 'probate licence' see PARA 1332 note 18.

9 Courts and Legal Services Act 1990 s 53(9)(b).

- 10 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.
- 11 Courts and Legal Services Act 1990 s 53(9)(c).
- 12 Courts and Legal Services Act 1990 s 53(9)(d). The rules referred to in the text are those made under the Courts and Legal Services Act 1990 Sch 8: see PARA 1338 et seq.
- 13 As to the meaning of 'advocacy services' see PARA 495 note 3.
- 14 As to the meaning of 'litigation services' see PARA 495 note 4.
- 15 Courts and Legal Services Act 1990 s 53(9)(e). As to the meaning of 'probate services' see PARA 427 note 4. As from a day to be appointed s 53(9)(e) is repealed by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 34. At the date at which this volume states the law no such day had been appointed.
- 16 Courts and Legal Services Act 1990 s 53(9)(f). The relevant provisions referred to in the text are the Courts and Legal Services Act 1990 s 53, Sch 8 (see PARA 1338 et seq): s 53(9)(f).
- 17 Courts and Legal Services Act 1990 s 53(9).

UPDATE

1337 Application of statutory provisions relating to conveyancing services

NOTES 4, 15--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(3) AUTHORISATION IN RESPECT OF OTHER LEGAL SERVICES/1338. Qualification regulations and rules of conduct.

1338. Qualification regulations and rules of conduct.

For the purpose of exercising the powers conferred on it or prospectively conferred on it to become an authorised or approved body¹, the Council for Licensed Conveyancers² may make such qualification regulations³ and rules of conduct⁴ as it considers appropriate in connection with the granting of the rights or exemptions in question⁵. In making any such regulations or rules the Council may, in particular, do anything which it has power to do in making⁶ training rules⁷.

1 le the powers conferred by the Courts and Legal Services Act 1990 s 53: see PARA 1335. As from a day to be appointed s 53 is amended so that it confers instead the power to become a designated regulator: see PARA 1335.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 As to the meaning of 'qualification regulations' see PARAS 497 note 8, 498 note 7. As to registration as a probate practitioner see the Licensed Conveyancers' Probate Rules 2008 rr 3.1-3.6. Provision is made for qualifying probate examinations (see r 3.7-3.113), practical probate training (see rr 3.14, 3.15), and continuing professional development (see r 4). As to the rules see PARA 1336 note 3. As to the meaning of 'probate practitioners' see PARA 1339 note 3.

4 As to the meaning of 'rules of conduct' see PARA 495 note 10. The Licensed Conveyancers' Conduct Rules 2005, along with any guidance notes, apply, as appropriately modified, to probate practitioners: see the Licensed Conveyancers' Probate Rules 2008 r 8; and PARA 1342 et seq. Provision is also made with regard to inspection and disciplinary consequences: r 10.

5 Courts and Legal Services Act 1990 s 53(7), Sch 8 paras 1, 2(1). As from a day to be appointed Sch 8 para 2(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 2, paras 33, 35(1), (3)(b) to replace 'rules of conduct' with 'conduct rules', and 'granting of the rights or exemptions' with 'carrying on of the reserved legal activities'. As to the meaning of 'conduct rules' see PARA 377 notes 5; and as to the meaning of 'reserved legal activities' see PARA 509. At the date at which this volume states the law no such day had been appointed.

6 le under the Administration of Justice Act 1985 s 13: see PARA 1326.

7 Courts and Legal Services Act 1990 Sch 8 paras 1, 2(2).

UPDATE

1338 Qualification regulations and rules of conduct

NOTE 5--Day appointed is 1 January 2010: SI 2009/5250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(3) AUTHORISATION IN RESPECT OF OTHER LEGAL SERVICES/1339. Applications for licences.

1339. Applications for licences.

An application for an advocacy licence¹, litigation licence² or probate licence³ must be made to the Council for Licensed Conveyancers⁴ in such manner, and must be accompanied by such fee, as may be prescribed by rules made by the Council under these provisions⁵. Any such rules may prescribe the forms to be used in connection with applications for any such licence and provide for applications of any description specified in the rules to be exempt from any of their requirements⁶. Rules regarding applications for licences to practise as a licensed conveyancer⁷ and rules made under these provisions may make provision with respect to applications for composite licences⁸.

1 As to the meaning of 'advocacy licence' see PARA 1332 note 16.

2 As to the meaning of 'litigation licence' see PARA 1332 note 17.

3 As to the meaning of 'probate licence' see PARA 1332 note 18.

An application for a probate licence must be made in the prescribed form: see the Licensed Conveyancers' Probate Rules 2008 r 2. No person is entitled to apply for a probate licence for the first time unless he has or is immediately entitled to a licence to practise as a licensed conveyancer and has either: (1) passed the qualifying probate examinations, completed the practical probate training, and in respect of any period exceeding three months following the conclusion of his practical probate training, provided to the satisfaction of the Council evidence of having undergone relevant probate experience; or (2) has demonstrated to the satisfaction of the Council, in accordance with such terms and conditions as it may prescribe, that he has the relevant educational and professional qualifications and experience in the provision of probate services: r 5.1. Further provision with regard to application for a probate licence is made by rr 5.2-5.5. 'Probate licence' means a licence issued by the Council to a probate practitioner to provide probate services; a 'full probate licence' and a 'limited probate licence' mean respectively a licence so endorsed: r 1.2. 'Probate practitioner' means any person holding a probate licence in force granted by the Council: r 1.2. 'Probate services' means services limited to the drawing or preparation of any papers on which to found or oppose a grant of probate or grant of letters of administration and the administration of the estate of a deceased person: r 1.2. 'Qualifying probate examinations' means the methods of assessment and examination in accordance with the Council's probate syllabus as determined by the Council: r 1.2. As to the rules see PARA 1336 note 3.

4 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

5 Courts and Legal Services Act 1990 Sch 8 paras 1, 3(1).

6 Courts and Legal Services Act 1990 Sch 8 para 3(2).

7 The rules made under the Administration of Justice Act 1985 s 14: see PARA 1327.

8 Courts and Legal Services Act 1990 Sch 8 paras 1, 3(3). See also s 53(4); and PARA 1335.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(3) AUTHORISATION IN RESPECT OF OTHER LEGAL SERVICES/1340. Issue or refusal of licences.

1340. Issue or refusal of licences.

If, on an application for an advocacy¹, litigation² or probate licence³, the Council for Licensed Conveyancers⁴ is satisfied that:

- 1926 (1) the applicant has complied with such qualification regulations⁵, rules of conduct⁶ or other requirements as are applicable in his case in relation to the licence applied for;
- 1927 (2) he has made adequate arrangements for the purpose of complying with any provisions which are applicable in his case in relation to the licence applied for; and
- 1928 (3) he is a fit and proper person to provide the advocacy⁷, litigation⁸ or probate services⁹ in question,

the Council may issue the applicant either with a licence free of conditions or with a licence subject to such conditions as it sees fit to impose¹⁰.

If the Council is for any reason not so satisfied, or for any other reason refuses the application, it must notify the applicant of its refusal and of the grounds on which the application has been refused¹¹.

1 As to the meaning of 'advocacy licence' see PARA 1332 note 16.

2 As to the meaning of 'litigation licence' see PARA 1332 note 17.

3 As to the meaning of 'probate licence' see PARA 1332 note 18. As to the issue and refusal of probate licences to licensed conveyancers see the Licensed Conveyancers' Probate Rules 2008 rr 5.6-5.15. As to the rules see PARA 1336 note 3.

4 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

5 As to the meaning of 'qualification regulations' see PARAS 497 note 8, 498 note 7.

6 As to the meaning of 'rules of conduct' see PARA 495 note 10.

7 As to the meaning of 'advocacy services' see PARA 495 note 3.

8 As to the meaning of 'litigation services' see PARA 495 note 4.

9 As to the meaning of 'probate services' see PARA 495 note 5.

10 Courts and Legal Services Act 1990 s 53(7), Sch 8 paras 1, 4(1). As to conditional licences see PARA 1341. As from a day to be appointed Sch 8 para 24(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (4) to replace 'rules of conduct' with 'conduct rules', and 'provide the advocacy, litigation or probate services' with 'carry on the reserved legal activities'. As to the meaning of 'conduct rules' see PARA 377 note 5; and as to the meaning of 'reserved legal activities' see PARA 509. At the date at which this volume states the law no such day had been appointed.

11 Courts and Legal Services Act 1990 Sch 8 para 4(2). The Administration of Justice Act 1985 s 15(3)-(6) (issue of licences under s 14) (see PARAS 1328-1329) applies, with the necessary modifications, with respect to any application under the Courts and Legal Services Act 1990 Sch 8 para 3 (see PARA 1339) and any licence in force under s 53 (see PARA 1335) as it applies with respect to any application under the Administration of Justice Act 1985 s 14 (see PARA 1327) and any licence under Pt II (ss 11-39) (see PARAS 1319 et seq, 1342 et seq):

Courts and Legal Services Act 1990 Sch 8 para 4(3). As to the application of the Administration of Justice Act 1985 see also PARA 1337.

UPDATE

1340 Issue or refusal of licences

NOTE 10--Day appointed is 1 January 2010: SI 2009/5250.

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1341. Conditional licences.

The following provisions have effect in any case where a person applies for an advocacy¹, litigation² or probate licence³:

- 1929 (1) for the first time⁴;
- 1930 (2) when a licence of the kind applied for which has previously been held by him has been subject to conditions⁵;
- 1931 (3) when, on the first day of the period to which the licence applied for would, if granted, relate, a period of 12 months or more will have elapsed since he held a licence of that kind⁶;
- 1932 (4) after the Discipline and Appeals Committee⁷ has made any order⁸ in his case⁹; and
- 1933 (5) where any of the specified circumstances¹⁰ apply in his case¹¹.

In any such case, the Council for Licensed Conveyancers¹² may, on issuing any such licence, issue it subject to such conditions as the Council thinks fit¹³. Its decision in any such case to impose any particular conditions may be made by reference to such criteria of general application as may have been determined by the Council¹⁴.

As from a day to be appointed, where a person applies for an advocacy, litigation or probate licence at a time when the foregoing provisions have effect in relation to that person¹⁵ the application must be accompanied by an additional prescribed fee¹⁶. At the date at which this volume states the law no such day had been appointed.

1 As to the meaning of 'advocacy licence' see PARA 1332 note 16.

2 As to the meaning of 'litigation licence' see PARA 1332 note 17.

3 As to the meaning of 'probate licence' see PARA 1332 note 18.

4 Courts and Legal Services Act 1990 s 53(7), Sch 8 para 5(1)(a).

5 Courts and Legal Services Act 1990 Sch 8 para 5(1)(b). As to the power to issue licences subject to conditions see Sch 8 para 4(1); and PARA 1340.

6 Courts and Legal Services Act 1990 Sch 8 para 5(1)(c).

7 For these purposes, the 'Discipline and Appeals Committee' means the committee established under the Administration of Justice Act 1985 s 25 (see PARA 1362); Courts and Legal Services Act 1990 Sch 8 para 1.

8 Ie under the Administration of Justice Act 1985 s 26: see PARA 1378.

9 Courts and Legal Services Act 1990 Sch 8 paras 1, 5(1)(d). As from a day to be appointed Sch 8 para 5(1)(d) is substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (5)(a) to mean that the Courts and Legal Services Act 1990 Sch 8 para 5 also has effect after the Investigating Committee has made any order under the Administration of Justice Act 1985 s 24A(1) (see PARA 1361). At the date at which this volume states the law no such day had been appointed.

10 Ie the circumstances mentioned in the Administration of Justice Act 1985 s 16(1)(e)-(j): see PARA 1330.

11 Courts and Legal Services Act 1990 Sch 8 paras 1, 5(2). Schedule 8 para 5(1), (2) is subject to the Administration of Justice Act 1985 s 16(4) (as applied by the Courts and Legal Services Act 1990 Sch 8 para 5(7): see note 14): Sch 8 para 5(3).

12 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

13 Courts and Legal Services Act 1990 Sch 8 para 5(4). Without prejudice to the generality of Sch 8 para 5(4), conditions may be so imposed for (1) restricting the kinds of service that may be provided by the applicant by virtue of his having the advocacy, litigation or probate licence in question; or (2) requiring the applicant to take any specified steps that will, in the opinion of the Council, be conducive to his carrying out an efficient practice, as a licensed conveyancer who provides the additional services authorised by that licence, and conditions may be so imposed, whether for the purposes mentioned in head (2) above or otherwise, as they may under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1342 et seq): Courts and Legal Services Act 1990 Sch 8 paras 1, 5(6). As to the meaning of 'licensed conveyancer', and as to the meaning of references to practising as a licensed conveyancer, see PARA 1319 note 3. As from a day to be appointed Sch 8 para 5(6) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (5)(b) to replace references to services provided to activities carried on. At the date at which this volume states the law no such day had been appointed.

14 Courts and Legal Services Act 1990 Sch 8 para 5(5). The Administration of Justice Act 1985 s 16(4), (5) has effect, with the necessary modifications, with respect to an advocacy, litigation or probate licence as it has effect with respect to a licence issued under Pt II: Courts and Legal Services Act 1990 Sch 8 para 5(7).

15 Ie by reason of the circumstances mentioned in the Administration of Justice Act 1985 s 16(1)(ea) (see PARA 1330 note 9): Courts and Legal Services Act 1990 Sch 8 para 5(8) (as prospectively added: see note 16).

16 Courts and Legal Services Act 1990 Sch 8 para 5(8) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (5)(c)). The fee referred to is such as may be prescribed under the Administration of Justice Act 1985 s 16A(2): see PARA 1330.

UPDATE

1341 Conditional licences

NOTES 9, 13--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(4) CODE OF CONDUCT/1342. In general.

(4) CODE OF CONDUCT

1342. In general.

The Council for Licensed Conveyancers¹ must, in pursuance of its general statutory duty², make rules³ for regulating the professional practice, conduct and discipline of licensed conveyancers⁴. Until a day to be appointed such rules may provide for regulating the association of licensed conveyancers with other persons in connection with the provision of conveyancing services⁵ to members of the public⁶. They may also provide for regulating the association of licensed conveyancers with respect to whom advocacy⁷, litigation⁸ or probate licences⁹ are in force, with other persons in connection with the provision of advocacy¹⁰, litigation¹¹ or probate services¹² to members of the public¹³. At the date at which this volume states the law no such day had been appointed.

Every licensed conveyancer¹⁴ must comply with the Council's rules¹⁵, and must also comply with any guidance notes¹⁶ the Council issues unless he has a good reason for not doing so in the particular circumstances¹⁷.

The Council has also issued practice notes for the guidance of licensed conveyancers¹⁸.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 I.e. the duty referred to in the Administration of Justice Act 1985 s 12(2): see PARA 1320. The rules must also be made in pursuance of the Council's general duty under the Courts and Legal Services Act 1990 s 53(5) (rights of audience etc: see PARA 1335): s 53(7), Sch 8 para 7(1) (Sch 8 para 7 prospectively repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 2 paras 33, 35(6), Sch 23). See also note 4.

3 As to the making of rules generally see PARA 1326 note 2.

4 Administration of Justice Act 1985 s 20(1). As from a day to be appointed s 20(1) is amended by the Legal Services Act 2007 ss 182, 210, Sch 17, Pt 1 paras 1, 10, Sch 23 to remove the reference to the general statutory duty. At the date at which this volume states the law no such day had been appointed.

See the Licensed Conveyancers' Conduct Rules 2005 (19 October 2005) which were made with the concurrence of the Secretary of State and which came into force on 31 March 2006: r 1.1. As to the use of inclusive language in rules and regulations made by the Council see PARA 1320 note 9. These conduct rules also apply, as appropriately modified, to probate practitioners: see the Licensed Conveyancers' Probate Rules 2008 r 8; and PARA 1338 note 4. As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

5 As to the meaning of 'conveyancing services' see PARA 1319 note 2.

6 Administration of Justice Act 1985 s 20(2).

7 As to the meaning of 'advocacy licence' see PARA 1332 note 16.

8 As to the meaning of 'litigation licence' see PARA 1332 note 17.

9 As to the meaning of 'probate licence' see PARA 1332 note 18.

10 As to the meaning of 'advocacy services' see PARA 495 note 3.

11 As to the meaning of 'litigation services' see PARA 495 note 4.

12 As to the meaning of 'probate services' see PARA 427 note 5.

13 Courts and Legal Services Act 1990 Sch 8 para 7(2) (as prospectively repealed: see note 2).

14 'Licensed conveyancer' means a person who holds a licence and/or a recognised body: Licensed Conveyancers' Conduct Rules 2005 r 2.1. 'Licence' means a licence to practise as a licensed conveyancer issued by the Council subject to the conditions as specified at r 3.3 (see PARA 1344) where a full licence is issued and as specified at r 3.4 (see PARA 1344) where a limited licence is issued: r 2.1. 'Recognised Body' means a body corporate recognised by the Council under the Administration of Justice Act 1985 s 32 to provide conveyancing services to the public: r 2.1. 'Conveyancing Services' means the preparation of transfers, conveyances, contracts and other documents in connection with, and other services ancillary to, the disposition or acquisition of estates or interests in land: r 2.1.

15 Licensed Conveyancers' Conduct Rules 2005 r 3.1.

16 'Guidance notes' means guidance issued by the Council to facilitate compliance with the Council's rules: Licensed Conveyancers' Conduct Rules 2005 r 2.1. The Council has issued the following guidance notes: (1) Guidance Note 1: Practising address and communications; (2) Guidance Note 2: Undertakings; (3) Guidance Note 3: Supervision; (4) Guidance Note 4: Management arrangements; (5) Guidance Note 5: Conflicts of interest; (6) Guidance Note 6: Disclosure of profits and advantages; (7) Guidance Note 7: Conveyancing files; (8) Guidance Note 8: Estimates and terms of engagement; (9) Guidance Note 9: Complaints procedure; (10) Guidance Note 10: Anti money laundering; (11) Guidance Note 11: Dealing with unqualified third parties; (12) Guidance Note 12: Home information packs; (13) Guidance Note 13: Acting for lenders; (14) Guidance Note 14: Mortgage fraud.

17 Licensed Conveyancers' Conduct Rules 2005 r 3.2.

18 The practice notes so issued, and of current relevance, relate to (1) insurance intermediaries (January 2005); and (2) arrangements for incapacity and death (July 2005).

UPDATE

1342-1347 Code of Conduct

Licensed Conveyancers' Conduct Rules 2005 replaced by Licensed Conveyancers' Conduct Rules 2009.

1342 In general

NOTE 2--Repeal in force 1 January 2010: SI 2009/3250.

NOTE 4--Day appointed is 1 January 2010: SI 2009/3250.

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1343. Practising address and communications.

A licensed conveyancer¹ must control² his practice³ from a permanent fixed address in England or Wales⁴. All communications⁵ must include: (1) the full address of the head office of the practice⁶; (2) the names of the sole practitioner, the partners or, in the case of a recognised body⁷, the directors⁸; and (3) the words 'Regulated by the Council for Licensed Conveyancers'⁹. The current full licence¹⁰ of the sole practitioner, partners or directors, and, in the case of a recognised body, the current certificate of recognition issued by the Council for Licensed Conveyancers¹¹ must be displayed at the head office of a practice¹². A duplicate of the current full licence of the sole practitioner, partners or directors, a notice giving the full address of the head office of the practice, and, in the case of a recognised body, a duplicate of the current certificate of recognition issued by the Council must be displayed at each branch office of a practice¹³. All communications must include the full address of the branch office if issued from a branch office, distinguish the names of the licensed conveyancers from those who are not so licensed, and in the case of a recognised body, distinguish between directors who are and who are not licensed conveyancers¹⁴.

In whatever manner a practice is controlled the Council must at all times be satisfied that: (a) there is compliance with all the Council's rules¹⁵; (b) it is able to undertake effective monitoring¹⁶; (c) on an intervention the Council must have immediate and unrestricted access within England and/or Wales to all information held on a durable medium¹⁷ relating to a practice whether originating within England and/or Wales or elsewhere (to include its records, papers, files and financial accounts)¹⁸.

1 As to the meaning of 'licensed conveyancer' see PARA 1342 note 14.

2 'Control' means to have strategic management, risk management, accounting and financial controls (including supervisory and audit functions): Licensed Conveyancers' Conduct Rules 2005 r 2.1.

3 'Practice' means a licensed conveyancer who is a sole practitioner; or two or more licensed conveyancers in partnership; or a recognised body: Licensed Conveyancers' Conduct Rules 2005 r 2.1.

4 Licensed Conveyancers' Conduct Rules 2005 r 3.5. Provided he can demonstrate that he controls his practice from a permanent fixed address in England or Wales a licensed conveyancer may arrange for his operations (including administrative functions and work undertaken on specific client matters) to be carried out elsewhere, provided he has given prior written notification to the Council of his intention to do so: Guidance Note 1 (Practising Address and Communications) paras 1, 2. As to guidance notes see PARA 1342 note 16.

5 'Communications' means letters sent by post or by a telecommunication system or by other means whilst in an electronic form: Licensed Conveyancers' Conduct Rules 2005 r 2.1.

6 Licensed Conveyancers' Conduct Rules 2005 r 3.6.1.

7 As to the meaning of 'recognised body' see PARA 1342 note 14.

8 Licensed Conveyancers' Conduct Rules 2005 r 3.6.2.

9 Licensed Conveyancers' Conduct Rules 2005 r 3.6.3.

10 As to the meaning of 'licence' see PARA 1342 note 14.

11 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

12 Licensed Conveyancers' Conduct Rules 2005 r 3.7.

- 13 Licensed Conveyancers' Conduct Rules 2005 r 3.8.
- 14 Guidance Note 1 (Practising Address and Communications) para 4.
- 15 Guidance Note 1 (Practising Address and Communications) para 3.
- 16 Guidance Note 1 (Practising Address and Communications) para 3. The Council must have immediate and unrestricted access within England and/or Wales to all information held on a durable medium relating to the practice whether originating within England and/or Wales or elsewhere (to include its records, papers, files and financial accounts). The Council may make it a condition of the grant of the licence to licensed conveyancers who wish to carry out some aspect of their business outside England and Wales that they undertake to pay the Council's costs of carrying out monitoring inspections so as to offset any increased costs to the Council of those inspections: para 3. 'Durable medium' means the means by which information is stored in a way accessible for future reference for no less than the period prescribed by the Council and which allows the unchanged reproduction of the information stored: Licensed Conveyancers' Conduct Rules 2005 r 2.1.
- 17 'Durable medium' means the means by which information is stored in a way accessible for future reference for no less than the period prescribed by the Council and which allows the unchanged reproduction of the information stored: Licensed Conveyancers' Conduct Rules 2005 r 1.2.
- 18 Guidance Note 1 (Practising Address and Communications) para 3.

UPDATE

1342-1347 Code of Conduct

Licensed Conveyancers' Conduct Rules 2005 replaced by Licensed Conveyancers' Conduct Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(4) CODE OF CONDUCT/1344. Conduct of a licensed conveyancer.

1344. Conduct of a licensed conveyancer.

A licensed conveyancer¹ holding a full licence² must only provide conveyancing services³ to the public as a sole practitioner or as a partner in a firm of licensed conveyancers, as a director or an employee of a recognised body⁴, or through an employer who is legally qualified to provide conveyancing services⁵. A licensed conveyancer holding a limited licence⁶ must only provide conveyancing services to the public through an employer who is legally qualified to provide conveyancing services⁷.

A licensed conveyancer must:

- 1934 (1) act with integrity and honesty⁸;
- 1935 (2) act with reasonable care, skill and diligence⁹;
- 1936 (3) not take, and must not permit anyone on his behalf to take, any action which may bring disrepute to the profession¹⁰;
- 1937 (4) neither directly nor indirectly discriminate against nor treat less favourably any person because of their ethnic or national origin, sex, sexual orientation, marital status, religion, education, age or disability¹¹;
- 1938 (5) ensure that all his partners, employees and directors (including directors who are not licensed conveyancers) comply with the Council's rules¹²;
- 1939 (6) when acting in that capacity only accept instructions to act in a matter which is regulated by the Council for Licensed Conveyancers¹³;
- 1940 (7) when acting in matters not regulated by the Council not communicate in a way which states or implies he is undertaking the work as a licensed conveyancer¹⁴;
- 1941 (8) when undertaking work which is not regulated by the Council inform the client¹⁵ in writing that such work is not so regulated and that it is not covered by indemnity insurance taken out in accordance with the Council's rules¹⁶;
- 1942 (9) immediately notify the Council in writing of any breach of the Council's rules by him, any of his partners, employees or directors (including directors who are not licensed conveyancers)¹⁷;
- 1943 (10) not act nor fail to act in a matter or in any way which he knows or has reasonable grounds for suspecting will result in a breach by the licensed conveyancer of the law or of the Council's rules¹⁸;
- 1944 (11) comply fully with any undertaking given by him, the practice¹⁹ or any employee of the practice²⁰;
- 1945 (12) never give false or misleading information relating to the provision of conveyancing services to any person²¹;
- 1946 (13) promptly comply with any request for information made by the Council as authorised by statute or by the Council's rules²²;
- 1947 (14) promptly notify the Council in writing of any facts or matters which may give rise to a claim under the Council's compensation fund²³;
- 1948 (15) promptly notify his insurers in writing of any facts or matters which may give rise to a claim under the Council's master policy²⁴;
- 1949 (16) cease to provide conveyancing services for any period for which the current evidence of insurance issued to his practice has been avoided²⁵.

With the exception of unsolicited telephone calls or unsolicited visits a licensed conveyancer may promote his practice²⁶ through any means, provided that a person may freely choose a practitioner to act on his behalf²⁷.

A practice must:

- 1950 (a) not offer conveyancing services to the public as a new business without having first obtained permission from the Council²⁸;
- 1951 (b) not conduct business under a name which is misleading²⁹;
- 1952 (c) ensure all work is either carried out by or effectively supervised and directed by a qualified person³⁰;
- 1953 (d) keep information and records of the practice safe on a durable medium³¹;
- 1954 (e) have in place an appropriate written complaints procedure³²;
- 1955 (f) have in place appropriate management arrangements and systems to ensure compliance with the Council's rules³³.

1 As to the meaning of 'licensed conveyancer' see PARA 1342 note 14.

2 As to the meaning of 'licence' see PARA 1342 note 14.

3 As to the meaning of 'conveyancing services' see PARA 1342 note 14.

4 'Recognised body' means a body corporate recognised by the Council Administration of Justice Act 1985 s 32 (see PARA 1392 et seq) to provide conveyancing services to the public: Licensed Conveyancers' Conduct Rules 2005 r 2.1.

5 Licensed Conveyancers' Conduct Rules 2005 r 3.3.

6 As to limited licences see PARA 1327 note 10.

7 Licensed Conveyancers' Conduct Rules 2005 r 3.4.

8 Licensed Conveyancers' Conduct Rules 2005 r 4.1.1.

9 Licensed Conveyancers' Conduct Rules 2005 r 4.1.2. See further Guidance Note 11 (Dealing with Unqualified Third Parties).

10 Licensed Conveyancers' Conduct Rules 2005 r 4.1.3.

11 Licensed Conveyancers' Conduct Rules 2005 r 4.1.4.

12 Licensed Conveyancers' Conduct Rules 2005 r 4.1.5. As to a partner's responsibility with regard to undertakings see the text to note 14.

13 Licensed Conveyancers' Conduct Rules 2005 r 4.1.6. As to the Council for Licensed Conveyancers see PARA 1320 et seq.

14 Licensed Conveyancers' Conduct Rules 2005 r 4.1.7.

15 'Client' means any person or persons for whom a licensed conveyancer acts in the provision of conveyancing services: Licensed Conveyancers' Conduct Rules 2005 r 2.1.

16 Licensed Conveyancers' Conduct Rules 2005 r 4.1.8.

17 Licensed Conveyancers' Conduct Rules 2005 r 4.1.9.

18 Licensed Conveyancers' Conduct Rules 2005 r 4.1.10. See further Guidance Note 10 (Prevention of Money Laundering and Combating Terrorist Financing).

19 As to the meaning of 'practice' see PARA 1343 note 3.

20 Licensed Conveyancers' Conduct Rules 2005 r 4.1.11. An undertaking is an unequivocal declaration of intention addressed to someone who reasonably places reliance upon it and it need not be in writing nor contain the word 'undertake' to be enforceable: Guidance Note 2 (Undertakings) para 1. All partners are equally

responsible for the performance of undertakings given in the name of the practice, and will remain so even after they have left the practice or it has been dissolved: Guidance Note 2 (Undertakings) para 2. Further provision is made with regard to undertakings: see paras 3-10.

21 Licensed Conveyancers' Conduct Rules 2005 r 4.1.12.

22 Licensed Conveyancers' Conduct Rules 2005 r 4.1.13.

23 Licensed Conveyancers' Conduct Rules 2005 r 4.1.14. 'Compensation fund' means the fund out of which grants and other payments are made by the Council for the purposes set out at the Administration of Justice Act 1985 s 21(2) (see PARA 1348): Licensed Conveyancers' Conduct Rules 2005 r 2.1.

24 Licensed Conveyancers' Conduct Rules 2005 r 4.1.15. 'Master policy' means the insurance policy authorised by the Licensed Conveyancers' Indemnity Rules 2005: Licensed Conveyancers' Conduct Rules 2005 r 2.1. As to the Indemnity Rules 2005 see PARA 1349.

25 Licensed Conveyancers' Conduct Rules 2005 r 4.1.16.

26 As to the meaning of 'practice' see PARA 1343 note 3.

27 Licensed Conveyancers' Conduct Rules 2005 r 4.2.

28 Licensed Conveyancers' Conduct Rules 2005 r 4.3.1.

29 Licensed Conveyancers' Conduct Rules 2005 r 4.3.2.

30 Licensed Conveyancers' Conduct Rules 2005 r 4.3.3.

31 Licensed Conveyancers' Conduct Rules 2005 r 4.3.4.

32 Licensed Conveyancers' Conduct Rules 2005 r 4.3.5.

33 Licensed Conveyancers' Conduct Rules 2005 r 4.3.6.

UPDATE

1342-1347 Code of Conduct

Licensed Conveyancers' Conduct Rules 2005 replaced by Licensed Conveyancers' Conduct Rules 2009.

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1345. Conduct towards clients.

A licensed conveyancer¹ in the provision of conveyancing services² must:

- 1956 (1) at all times keep paramount the interests of the client³ except as required by law or by the Council for Licensed Conveyancer's rules⁴;
- 1957 (2) keep confidential all information about the client except as authorised by the client or as required by law or the Council's rules⁵;
- 1958 (3) not accept instructions from a person nor continue to act for any client whose interests conflict directly or indirectly with his own or those of his practice⁶, or with those of any other client⁷;
- 1959 (4) except as permitted in guidance issued by the Council, not act for more than one client in a matter unless each client is informed in writing in advance that the practice has been asked to act for another client, and each client is at all times represented by different qualified persons⁸ and those qualified persons conduct themselves in the matter as though they were members of different practices⁹;
- 1960 (5) on the granting or redemption of a mortgage not act for himself nor for any client prohibited by the instructions of any lender¹⁰;
- 1961 (6) only accept instructions within his professional competence¹¹;
- 1962 (7) only undertake matters within his professional competence¹²;
- 1963 (8) advise a client to seek legal or other advice where a matter is beyond the professional competence of the licensed conveyancer¹³;
- 1964 (9) not seek to exclude or limit liability except with the informed written consent of the client¹⁴;
- 1965 (10) ensure that all communications¹⁵ are clear, fair and not misleading¹⁶;
- 1966 (11) disclose to a client in writing, as soon as they are known to the licensed conveyancer, the existence and amount of any sum payable by or to the licensed conveyancer arising, whether directly or indirectly, from the client's instructions¹⁷;
- 1967 (12) keep safe client information and records on a durable medium¹⁸ until delivered to the client or disposed of in accordance with guidance issued by the Council¹⁹;
- 1968 (13) before or when accepting instructions, set out in writing to the client the terms on which instructions are accepted, an estimate of costs and the practice's complaints procedure²⁰;
- 1969 (14) where a complaint is received comply with the practice's complaints procedure²¹;
- 1970 (15) keep the client properly informed²²;
- 1971 (16) not delay completion because his fees are outstanding (for this purpose fees do not include disbursements)²³;
- 1972 (17) with the authority of his seller client at once disclose in writing to all prospective buyers any instruction to submit contracts to more than one prospective buyer: if the seller client refuses to give such authority immediately cease to act²⁴;
- 1973 (18) cease acting in any matter if the client so instructs²⁵.

After giving his client reasonable notice in writing with reasons a licensed conveyancer may cease acting in any matter where it is reasonable for him to do so²⁶.

- 1 As to the meaning of 'licensed conveyancer' see PARA 1342 note 14.
- 2 As to the meaning of 'conveyancing services' see PARA 1342 note 14.
- 3 As to the meaning of 'client' see PARA 1344 note 15.
- 4 Licensed Conveyancers' Conduct Rules 2005 r 5.1.1. See further Guidance Note 11 (Dealing with Unqualified Third Parties).
- 5 Licensed Conveyancers' Conduct Rules 2005 r 5.1.2. See further Guidance Note 5 (Conflicts of Interest).
- 6 As to the meaning of 'practice' see PARA 1343 note 3.
- 7 Licensed Conveyancers' Conduct Rules 2005 r 5.1.3. See further Guidance Note 5 (Conflicts of Interest).
- 8 'Qualified person' means a licensed conveyancer holding a full licence; or a licensed conveyancer who holds, and has held for three consecutive immediately preceding years, a limited licence; or a solicitor who has been admitted for at least three years; or any other person in respect of whom the Council has exercised its discretion to give express approval: Licensed Conveyancers' Conduct Rules 2005 r 2.1.
- 9 Licensed Conveyancers' Conduct Rules 2005 r 5.1.4. See further Guidance Note 5 (Conflicts of Interest).
- 10 Licensed Conveyancers' Conduct Rules 2005 r 5.1.5. See further Guidance Note 5 (Conflicts of Interest).
- 11 Licensed Conveyancers' Conduct Rules 2005 r 5.1.6.
- 12 Licensed Conveyancers' Conduct Rules 2005 r 5.1.7.
- 13 Licensed Conveyancers' Conduct Rules 2005 r 5.1.8.
- 14 Licensed Conveyancers' Conduct Rules 2005 r 5.1.9.
- 15 As to the meaning of 'communications' see PARA 1343 note 5.
- 16 Licensed Conveyancers' Conduct Rules 2005 r 5.1.10. See further Guidance Note 6 (Disclosure of Profits and Advantages).
- 17 Licensed Conveyancers' Conduct Rules 2005 r 5.1.11. See further Guidance Note 6 (Disclosure of Profits and Advantages).
- 18 As to the meaning of 'durable medium' see PARA 1343 note 17.
- 19 Licensed Conveyancers' Conduct Rules 2005 r 5.1.12. See further Guidance Note 7 (Conveyancing Files).
- 20 Licensed Conveyancers' Conduct Rules 2005 r 5.1.13. See further Guidance Note 8 (Estimates and Terms of Engagement).
- 21 Licensed Conveyancers' Conduct Rules 2005 r 5.1.14. See further Guidance Note 9 (Complaints Procedures).
- 22 Licensed Conveyancers' Conduct Rules 2005 r 5.1.15.
- 23 Licensed Conveyancers' Conduct Rules 2005 r 5.1.16.
- 24 Licensed Conveyancers' Conduct Rules 2005 r 5.1.17.
- 25 Licensed Conveyancers' Conduct Rules 2005 r 5.1.18.
- 26 Licensed Conveyancers' Conduct Rules 2005 r 5.2.

UPDATE

1342-1347 Code of Conduct

Licensed Conveyancers' Conduct Rules 2005 replaced by Licensed Conveyancers' Conduct Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(4) CODE OF CONDUCT/1346. The requirement to report.

1346. The requirement to report.

A practice¹ must not, except with the written permission of the Council for Licensed Conveyancers², employ or pay or continue to employ or pay any person to provide conveyancing services³ who is known to that practice⁴:

- 1974 (1) to be subject to an order revoking or suspending his licence⁵ or disqualifying him from holding a licence⁶;
- 1975 (2) to have been convicted of a relevant criminal offence⁷;
- 1976 (3) to have had the Council's powers of intervention under the Administration of Justice Act 1985 and the Courts and Legal Services Act 1990 exercised against him or a practice in which he was a principal, partner or employee, unless more than six years have passed since such powers were exercised⁸;
- 1977 (4) as a member of another profession, to have had an order made against him by his professional body (other than an order which provides only for the payment of costs by him)⁹; or
- 1978 (5) to be subject to an order under the Solicitors Act 1974¹⁰, or to have been found guilty of an offence under that Act¹¹.

A practice must immediately notify the Council in writing if it intends to employ or pay or is employing or paying any such person¹².

A licensed conveyancer¹³ must immediately notify the Council in writing if to his knowledge he or any partner or director in his practice:

- 1979 (a) is a person to whom any of the foregoing provisions apply¹⁴;
- 1980 (b) has failed to satisfy a civil judgment¹⁵;
- 1981 (c) is an undischarged bankrupt or has made a composition or arrangement with creditors unless: (i) the bankruptcy is annulled either on the ground that he ought not to have been adjudged bankrupt or, where he is not subject to a bankruptcy restrictions order or interim order, on the ground that his debts have been paid in full on the date of annulment; or (ii) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled¹⁶;
- 1982 (d) has been a director of a company which has gone into liquidation on the grounds of insolvency¹⁷;
- 1983 (e) is a person who lacks the capacity to administer or manage his affairs¹⁸.

1 As to the meaning of 'practice' see PARA 1343 note 3.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 As to the meaning of 'conveyancing services' see PARA 1342 note 14.

4 Licensed Conveyancers' Conduct Rules 2005 r 6.2.

5 As to the meaning of 'licence' see PARA 1342 note 14.

6 Licensed Conveyancers' Conduct Rules 2005 r 6.2.1.

7 Licensed Conveyancers' Conduct Rules 2005 r 6.2.2. A relevant criminal offence is one involving fraud, dishonesty, deception or violence or an indictable offence (the rules refer to a 'serious arrestable offence' as defined by the Police and Criminal Evidence Act 1984 s 116, which provision is repealed by the Serious Organised Crime and Police Act 2005 Sch 7. As to indictable offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1102 et seq) unless the conviction is spent within the meaning of the Rehabilitation of Offenders Act 1974 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq); Licensed Conveyancers' Conduct Rules 2005 r 6.2.2.

8 Licensed Conveyancers' Conduct Rules 2005 r 6.2.3. As to the Council's powers of intervention see PARA 1384 et seq.

9 Licensed Conveyancers' Conduct Rules 2005 r 6.2.4.

10 In the Solicitors Act 1975 s 43(2): see PARA 927.

11 In the Solicitors Act 1974 s 44(1) (see PARA 929): Licensed Conveyancers' Conduct Rules 2005 r 6.2.5.

12 Licensed Conveyancers' Conduct Rules 2005 r 6.1.

13 As to the meaning of 'licensed conveyancer' see PARA 1342 note 14.

14 Licensed Conveyancers' Conduct Rules 2005 r 6.3.1. The person referred to in the text is one to whom the provisions of r 6.2 (see notes 1-11) apply.

15 Licensed Conveyancers' Conduct Rules 2005 r 6.3.2.

16 Licensed Conveyancers' Conduct Rules 2005 r 6.3.3. See further **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

17 Licensed Conveyancers' Conduct Rules 2005 r 6.3.4.

18 Licensed Conveyancers' Conduct Rules 2005 r 6.3.5. The rules refer to the Mental Health Act 1983 Pt VII which is repealed and replaced by the Mental Capacity Act 2005: see **MENTAL HEALTH**.

UPDATE

1342-1347 Code of Conduct

Licensed Conveyancers' Conduct Rules 2005 replaced by Licensed Conveyancers' Conduct Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(4) CODE OF CONDUCT/1347. Inspections and disciplinary procedure.

1347. Inspections and disciplinary procedure.

In order to monitor compliance with the Council for Licensed Conveyancers' rules¹, a licensed conveyancer² must at the time and place fixed by the Council produce to any person appointed by the Council all information held on a durable medium³ relating to his practice⁴ (to include his records, papers, files and financial accounts) reasonably required to enable the preparation of a report to the Council⁵.

If it appears to the Council that there has been a contravention of any of its rules, a licensed conveyancer or recognised body⁶ is liable to disciplinary proceedings and sanction⁷.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'licensed conveyancer' see PARA 1342 note 14.

3 As to the meaning of 'durable medium' see PARA 1343 note 17.

4 As to the meaning of 'practice' see PARA 1343 note 3.

5 Licensed Conveyancers' Conduct Rules 2005 r 7.1. A report made following an inspection under r 7.1 may be used as part of any investigation under the Administration of Justice Act 1985 s 24 (see PARA 1359): Licensed Conveyancers' Conduct Rules 2005 r 7.2.

6 As to the meaning of 'recognised body' see PARA 1342 note 14.

7 Licensed Conveyancers' Conduct Rules 2005 r 7.3. A licensed conveyancer is liable under the Administration of Justice Act 1985 ss 24, 26 (see PARAS 1359, 1378); a recognised body is liable under Sch 6 (see PARA 1402).

UPDATE

1342-1347 Code of Conduct

Licensed Conveyancers' Conduct Rules 2005 replaced by Licensed Conveyancers' Conduct Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(5) FINANCIAL REQUIREMENTS/(i) Professional Indemnity and Compensation/1348. Professional indemnity and compensation; in general.

(5) FINANCIAL REQUIREMENTS

(i) Professional Indemnity and Compensation

1348. Professional indemnity and compensation; in general.

The Council for Licensed Conveyancers¹ must make rules² for indemnifying licensed conveyancers³ and former licensed conveyancers against losses arising from claims in respect of any description of civil liability incurred by them, or by employees or associates⁴ or former employees or associates of theirs, in connection with their practices as licensed conveyancers⁵.

The Council must also make rules for the making of grants or other payments for the purpose of relieving or mitigating losses suffered by persons in consequence of (1) negligence or fraud or other dishonesty on the part of licensed conveyancers, or of employees or associates of theirs, in connection with their practices (or purported practices) as licensed conveyancers⁶; or (2) failure by licensed conveyancers to account for money received by them in connection with such practices or purported practices⁷. This power to make rules applies to the probate practices of licensed conveyancers as it applies to their practices as licensed conveyancers⁸.

For the purpose of providing such indemnity and enabling such grants or other payments to be made, rules under these provisions may (a) authorise or require the Council to establish and maintain a fund or funds; (b) authorise or require the Council to take out and maintain insurance with authorised insurers⁹; and (c) require licensed conveyancers or licensed conveyancers of any specified description to take out and maintain insurance with authorised insurers¹⁰.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the making of rules generally see PARA 1326 note 2.

3 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

4 'Associate' means, in the case of a licensed conveyancer practising in partnership with other persons, any partner of his not holding a licence in force under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1353 et seq) or any employee of such a partner: s 39(1).

5 Administration of Justice Act 1985 s 21(1). See the Licensed Conveyancers' Indemnity Rules 2005 which came into effect on 1 July 2005 (r 1); and PARA 1349. As to the use of inclusive language in rules and regulations made by the Council see PARA 1320 note 9. As to the meaning of 'practising as a licensed conveyancer' see PARA 1319 note 3.

6 Administration of Justice Act 1985 s 21(2)(a).

7 Administration of Justice Act 1985 s 21(2)(b). See the Council for Licensed Conveyancers' Compensation Fund Rules 2008 (16 January 2008) which came into effect on 30 November 2008 (r 1); and PARAS 1350-1352.

8 Administration of Justice Act 1985 s 21(2A) (s 21(2A), (2B) added by the Courts and Legal Services Act 1990 (Modification of Power to Make Rules about Licensed Conveyancers) Order 2008, SI 2008/537, art 2). 'Probate practice' means the provision of probate services, within the meaning given by the Courts and Legal Services Act 1990 s 119 (see PARA 427 note 5), by a person: Administration of Justice Act 1985 s 21(2B) (as so added).

9 'Authorised insurer' means: (1) a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (ss 40-55) (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 348-361) to effect or carry out contracts of insurance of a relevant class; (2) an EEA firm of the kind mentioned in Sch 3 para 5(d), which has permission under Sch 3 para 17 (as a result of qualifying for authorisation under Sch 3 para 12) to effect or carry out contracts of insurance of a relevant class (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 316-318); or (3) a person who does not fall within head (1) or (2) above and who may lawfully effect or carry out contracts of insurance of a relevant class in a member state other than the United Kingdom: Administration of Justice Act 1985 s 21(5) (s 21(5) substituted, and (6), (7) added by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649, art 298). A contract of insurance is of a relevant class for the purposes of the Administration of Justice Act 1985 s 21(5) if it insures against a risk arising from: (a) accident; (b) credit; (c) legal expenses; (d) general liability to third parties; (e) sickness; (f) suretyship; or (g) miscellaneous financial loss: s 21(6) (as so added). Section 21(5), (6) (as so substituted and added) must be read with the Financial Services and Markets Act 2000 s 22 (and any relevant order under that section), and Sch 2 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 84-85): Administration of Justice Act 1985 s 21(7) (as so added).

10 Administration of Justice Act 1985 s 21(3). Without prejudice to the generality of s 21(1)-(3), rules under s 21 may (1) specify the terms and conditions on which indemnity or a grant or other payment is to be available, and any circumstances in which the right to it is to be excluded or modified; (2) provide for the management, administration and protection of any fund maintained by virtue of s 21(3)(a) (see head (a) in the text) and require licensed conveyancers or licensed conveyancers of any specified description to make payments to any such fund; (3) require licensed conveyancers or licensed conveyancers of any specified description to make payments towards the premium payable on any insurance policy maintained by the Council by virtue of s 21(3)(b) (see head (b) in the text); (4) prescribe the conditions which an insurance policy must satisfy for the purposes of s 21(3)(c) (see head (c) in the text); (5) authorise the Council to determine the amount of any payments required by the rules, subject to such limits, or in accordance with such provisions, as may be prescribed by the rules; (6) specify circumstances in which, where a licensed conveyancer for whom indemnity is provided has failed to comply with the rules, the Council or insurers may take proceedings against him in respect of sums paid by way of indemnity in connection with a matter in relation to which there has been a failure to comply with the rules; (7) specify circumstances in which, where a grant or other payment is made in consequence of the act or omission of a licensed conveyancer, the Council or insurers may take proceedings against him in respect of the sum so paid; (8) specify circumstances in which licensed conveyancers are exempt from any of the requirements of the rules; (9) empower the Council to take such steps as it considers necessary or expedient to ascertain whether or not the rules are being complied with; and (10) contain incidental, procedural or supplementary provisions: s 21(4). See also s 15(8); and PARA 1328. As to the rules so made see notes 5, 7; and PARA 1349 et seq.

UPDATE

1348 Professional indemnity and compensation; in general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

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1349. Rules relating to professional indemnity.

The Council for Licensed Conveyancers¹ is authorised to take out and maintain with authorised insurers² a master policy³ and to arrange for the issue of evidence of insurance⁴ to practices⁵.

Each practice must pay the applicable annual premium in order to take out and maintain cover under the master policy, and comply with such terms of the master policy and evidence of insurance as apply to him⁶. No licence⁷ may be issued to a licensed conveyancer unless the applicable evidence of insurance for his practice has been produced to the Council⁸.

The Council is entitled to:

- 1984 (1) require an insured⁹ to produce to it such information as it may demand concerning any claim¹⁰;
- 1985 (2) exchange information concerning any claim with the authorised insurers, their representatives or the brokers¹¹;
- 1986 (3) receive notification from the authorised insurers or the brokers when any evidence of insurance is avoided¹².

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'authorised insurer' see PARA 1348 note 9 (definition applied by the Licensed Conveyancers' Indemnity Rules 2005 r 2.2).

3 'Master policy' means the insurance policy authorised by the Licensed Conveyancers' Indemnity Rules 2005: r 2.2.

4 'Evidence of insurance' means evidence that the insured has cover under the master policy: Licensed Conveyancers' Indemnity Rules 2005 r 2.2.

5 Licensed Conveyancers' Indemnity Rules 2005 r 3. 'Practice' means a licensed conveyancer who is a sole practitioner; two or more licensed conveyancers in partnership; or a recognised body, each providing conveyancing services to the public: r 2.2. As to the meaning of 'licensed conveyancer' see r 2.3; and PARA 1319 note 3. As to the meaning of 'recognised body' see r 2.3; and PARA 1392 note 14. As to the meaning of 'conveyancing services' see r 2.3; and PARA 1319 note 2.

6 Licensed Conveyancers' Indemnity Rules 2005 r 4.

7 As to the meaning of 'licence' see the Licensed Conveyancers' Indemnity Rules 2005 r 2.3; and PARA 1319 note 3.

8 Licensed Conveyancers' Indemnity Rules 2005 r 5.

9 'Insured' means a practice which has evidence of insurance: Licensed Conveyancers' Indemnity Rules 2005 r 2.2.

10 Licensed Conveyancers' Indemnity Rules 2005 r 6.1.

11 Licensed Conveyancers' Indemnity Rules 2005 r 6.2. 'Brokers' means the insurance brokers for the master policy: r 2.2.

12 Licensed Conveyancers' Indemnity Rules 2005 r 6.3.

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1350. The compensation fund.

The Council for Licensed Conveyancers¹ must administer and maintain a compensation fund².

Every applicant for a licence³ or for a certificate of recognition⁴ and every practice⁵ must pay to the Council a contribution to the fund of such an amount as the Council may determine⁶. In the absolute discretion of the Council any contribution to the fund may be made by instalments⁷.

The following must also be credited to the fund:

- 1987 (1) all interest, dividends and other income and accretions of capital arising from contributions⁸;
- 1988 (2) the proceeds of any realisation of the investments of the fund⁹;
- 1989 (3) all money borrowed for the purposes of the fund¹⁰;
- 1990 (4) all money recovered by the Council either directly or following the assignment to the Council of the rights of any claimant¹¹;
- 1991 (5) all recoveries under any insurance policy effected by the Council¹²;
- 1992 (6) any other money which may belong to or accrue to the fund or be received by the Council in respect of the fund¹³.

The Council must place the money constituting the fund in a separate designated account entitled 'Council for Licensed Conveyancers' Compensation Fund'¹⁴. As trustee the Council may invest the money constituting the fund in such a manner as it thinks fit, and borrow for the purposes of the fund, and may charge any investments of the fund by way of security for such a loan¹⁵. The Council may insure with authorised insurers¹⁶ for such purposes and on such terms as they may deem expedient in relation to the fund¹⁷.

All money from time to time forming part of the fund and all investments of the fund is applicable¹⁸:

- 1993 (a) for payment of any costs of establishing, maintaining, administering and applying the fund¹⁹;
- 1994 (b) for payment of any premiums on insurance effected by the Council²⁰;
- 1995 (c) for repayment of any money borrowed by the Council for the purposes of the fund and for payment of interest on any money so borrowed and for reimbursing the Council for any costs incurred in that respect²¹;
- 1996 (d) for payment of any grants which the Council may make²²;
- 1997 (e) for payment to the Council of all costs, charges and expenses incurred by it in the exercise of its powers²³ when they are exercised for the purposes of avoiding or minimising a claim on the fund²⁴;
- 1998 (f) for payment to the Council of any costs incurred by it inspecting and monitoring the practices and accounts of licensed conveyancers and recognised bodies and the practices and accounts of probate practitioners²⁵;
- 1999 (g) for refund of contributions²⁶.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 3.

3 As to the meaning of 'licence' see the Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2; and PARA 1319 note 3.

4 le issued by the Council under the Administration of Justice Act 1985 s 32(6): Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 4; and see PARA 1392.

5 'Practice' means a licensed conveyancer who is a sole practitioner, two or more licensed conveyancers in partnership, or a recognised body; in each case providing conveyancing services or conveyancing services and probate services regulated by the Council to the public: Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2. 'Licensed conveyancer' means any person holding a licence in force granted by the Council and, for the purpose of the Council for Licensed Conveyancers' Compensation Fund Rules 2008, includes a recognised body where the context so admits: r 2.2. 'Recognised body' means a body corporate recognised by the Council under the Administration of Justice Act 1985 s 32: Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2; and see PARA 1392 et seq. 'Conveyancing services' has the meaning given by the Administration of Justice Act 1985 s 11(3): Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2; and see PARA 1319 note 2. 'Probate services' means services limited to the drawing or preparation of any papers on which to found or oppose a grant of probate or grant of letters of administration and the administration of the estate of a deceased person: r 2.2.

6 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 4. A practice may also be required by the Council to make a further contribution towards the fund at any time: r 4. If a practice ceases to be regulated by the Council, the Council may, in its absolute discretion refund a proportion of its contribution by reference to any unexpired period in respect of which it has been paid: r 6. Any such contribution may in part or in full be applied towards the premium payable on any insurance policy maintained by the Council by virtue of r 11 (see text and note 17): r 7.

7 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 5. Any instalments unpaid in any year will become immediately due and payable and recoverable as a debt due to the Council in the event that the licensed conveyancer or practice ceases to be regulated by the Council: r 5.

8 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 8(b).

9 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 8(c).

10 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 8(d).

11 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 8(e). The rights of the claimant are assigned under r 17: see PARA 1352.

12 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 8(f). Insurance policies are effected by the Council under r 11: see text and note 17.

13 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 8(g).

14 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 9.

15 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 10.

16 le authorised insurers within the meaning of the Administration of Justice Act 1985 s 21(5): Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2; and see PARA 1348 note 9.

17 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 11.

18 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12.

19 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12(a). 'Costs' includes fees as defined by the Administration of Justice Act 1985 s 39(1) (see PARA 1324 note 11): Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2.

20 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12(b). Insurance is effected by the Council under r 11: see text and note 17.

21 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12(c).

22 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12(d). The Council makes grants under rr 13-16: see PARA 1351.

23 le the powers conferred by the Administration of Justice Act 1985 Sch 5 Pt II (see PARA 1385 et seq), Sch 6 paras 10-13 (see PARA 1406).

24 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12(e).

25 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12(f). 'Probate practitioners' means any person (including a recognised body) holding a licence issued by the council to provide probate services: r 2.2.

26 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 12(g). le contributions made under r 6: see note 6.

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1351. Grants of compensation.

The Council for Licensed Conveyancers¹ may in its absolute discretion make a grant out of the compensation fund² for the purpose of relieving or mitigating loss which the Council is satisfied any person has suffered or is likely to suffer in consequence of³:

- 2000 (1) the negligence, fraud or other dishonesty on the part of a licensed conveyancer or of any employee, associate⁴ of his in connection with his practice (or purported practice) as a licensed conveyancer⁵;
- 2001 (2) the failure on the part of a licensed conveyancer to account for money received by him in connection with his practice (or purported practice) as a licensed conveyancer⁶.

The Council may make interim or final payments by way of a grant or grants at any time before, during or after the investigation by the Council or any of its committees of a claim against a respondent practice provided that it is satisfied in every such case that the payment falls within the circumstances for which a grant may be made⁷.

After a grant has been made if a claimant wishes to seek an additional grant in respect of interest or costs, the claimant must submit a further claim⁸.

On receipt of a claim the Council must consider it and may in its absolute discretion make an additional grant or grants out of the fund under this provision as follows⁹:

- 2002 (a) in lieu of interest on the amount of a grant in every case for such a period and at such rate as determined by the Council at its absolute discretion¹⁰.
- 2003 (b) a sum in respect of the amount of reasonable costs incurred by any person making a claim wholly and exclusively in connection with the preparation, submission and proof of the claim¹¹.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the compensation fund see PARA 1350.

3 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 13. As to the making of claims under this rule see PARA 1352.

4 Is an associate within the meaning of the Administration of Justice Act 1985 s 39(1): Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2; and see PARA 1348 note 4.

5 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 13(a). As to the meaning of 'licensed conveyancer' see PARA 1350 note 5.

6 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 13(b).

7 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 14. 'Respondent practice' means a practice or former practice in respect of which a claim is made: r 2.2. As to the meaning of 'practice' see PARA 1350 note 5.

8 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 15. A claim for both interest and costs may be made in a single application: r 15. As to the making of claims under this rule see PARA 1352. As to the meaning of 'costs' see PARA 1350 note 19.

9 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 16.

10 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 16(a).

11 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 16(b).

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1352. Procedure on claims for compensation.

Where any person makes a claim for a grant¹ he must complete, sign and deliver to the Council for Licensed Conveyancers² a notice of claim as prescribed by the Council³. Such notice must provide for:

- 2004 (1) the assignment to the Council of all rights of action the claimant has against the respondent practice⁴ or any other person liable for the loss⁵;
- 2005 (2) retention by the compensation fund⁶ of all money recovered by the Council whether or not in excess of any grant made by the Council to the claimant⁷ after deduction of the costs incurred by the Council in making such recoveries⁸;
- 2006 (3) the claimant to covenant to do all such further things and produce such documents as may be required by the Council for the purpose of pursuing any claim against the respondent licensed conveyancer or any other person liable for the loss⁹.

The Council may:

- 2007 (a) require a claim to be supported by a statutory declaration made by the claimant¹⁰;
- 2008 (b) require the production of any relevant documents¹¹; and
- 2009 (c) cause such inquiries to be made in relation to the claim as the Council thinks fit¹².

The Council may, before deciding whether or not to make a grant, require a claimant to pursue any civil remedy which may be available in respect of the loss¹³.

Without limiting the absolute discretion of the Council it may take into account when deciding whether a claim for a grant should be paid in full, reduced or rejected:

- 2010 (i) whether the claimant has complied with the relevant rules¹⁴;
- 2011 (ii) whether sufficient information has been provided promptly in support of the claim¹⁵;
- 2012 (iii) whether the claimant has any responsibility for the loss, or directly or indirectly hoped to profit or did profit, whether wholly or otherwise, from the circumstances giving rise to the loss¹⁶;
- 2013 (iv) whether the claimant is protected in respect of his loss by any other scheme or any contract of insurance or indemnity or guarantee¹⁷;
- 2014 (v) whether the claimant has recovered damages or compensation in respect of the loss which had been suffered including any interest recovered as a result of any available civil remedy or in criminal proceedings or is likely to make such recovery in the future¹⁸;
- 2015 (vi) the assets available to the fund¹⁹;
- 2016 (vii) any representations made to the Council by the respondent practice, his personal representative, trustee in bankruptcy or the liquidator of a recognised body as the case may be²⁰;

- 2017 (viii) whether any statutory limitation period has expired²¹;
 2018 (ix) whether the claimant has taken all reasonable steps to mitigate loss²²;
 2019 (x) whether the claim has been exaggerated by the claimant²³;
 2020 (xi) whether the Council has reason to suspect fraud or other dishonesty on the part of the claimant in respect of the loss or in respect of the claim²⁴.

Where the Council refuses to make a grant of either the whole or part of the amount claimed it must inform the claimant in writing of the reason for its decision within 28 days of that decision²⁵. The Council must not make a grant unless it has caused a letter giving notification of the claim or additional claim to be sent to the respondent practice at his last known correspondence address or to any solicitor or other representative instructed by him or appointed on his behalf or in his stead and in any case not less than eight days have elapsed since the date of such letter²⁶.

Provided no other civil proceedings for recovery in respect of the same cause of action have already been issued, the Council may, even if it is not possible to obtain an assignment of the cause of action from or on behalf of the claimant, take proceedings against the respondent practice to recover the amount of any grant or other payment made in consequence of the act or omission of that practice in accordance with these rules²⁷.

1 le under the Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 13 or 15 (see PARA 1351): r 17.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 17. The claim under r 13 (see PARA 1351) must be delivered to the Council within six months (or such longer period as the Council may allow in a particular case) after the loss or likelihood of loss first came or should reasonably have come to the knowledge of the claimant: r 17(b). A claim under r 15 (see PARA 1351) must be delivered to the Council within 56 days of the making of the grant (or the date of receipt of notification by the Council that no further grant is to be made beyond that made by way of interim grant or grants under r 14 (see PARA 1351)): r 17(c).

4 As to the meaning of 'respondent practice' see PARA 1351 note 7. As to the meaning of 'licensed conveyancer' see PARA 1350 note 5.

5 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 17(a)(i).

6 As to the compensation fund see PARA 1350.

7 'Claimant' means any person making a claim for a grant from the fund and where the context so admits includes in the event of the death or insolvency of such person reference to his personal representative or his trustee in bankruptcy as the case may be: Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 2.2.

8 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 17(a)(ii). As to the meaning of 'costs' see PARA 1350 note 19.

9 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 17(a)(iii).

10 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 17(d)(i).

11 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 17(d)(ii).

12 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 17(d)(iii).

13 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 18.

14 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(a). The relevant rules are those under r 17(b), or (c) (see note 3) and, if required by the Council, r 17(d)(i), and (ii) (see text and notes 8, 9).

15 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(b).

- 16 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(c).
- 17 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(d).
- 18 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(e).
- 19 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(f).
- 20 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(g).
- 21 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(h).
- 22 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(i).
- 23 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(j).
- 24 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 19(k).
- 25 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 20.
- 26 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 21.
- 27 Council for Licensed Conveyancers' Compensation Fund Rules 2008 r 22. Such sums are recoverable as a debt owed to the Council: r 23

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(ii) Accounts

1353. Keeping of accounts and establishment of client accounts; in general.

The Council for Licensed Conveyancers¹ must make rules² requiring licensed conveyancers³ to keep such accounts in relation to their practices as may be prescribed by the rules⁴. The Council must also make rules requiring licensed conveyancers:

- 2021 (1) to open and keep accounts for clients'⁵ money at authorised institutions⁶;
- 2022 (2) to hold and pay out money so received in such manner as may be prescribed by the rules⁷; and
- 2023 (3) to keep accounts containing particulars and information as to money received or held or paid by them for or on account of their clients⁸.

Rules under any of the above provisions may empower the Council:

- 2024 (a) to require licensed conveyancers to deliver to the Council at such intervals as may be prescribed by the rules reports given by accountants⁹ and containing such information as may be so prescribed for the purpose of (i) giving a true and fair view of the state of their businesses; or (ii) enabling the Council to ascertain whether or not the rules have been complied with¹⁰; and
- 2025 (b) to take such other steps as it considers necessary or expedient for the purpose stated in head (ii) above¹¹.

Any such rules may specify circumstances in which persons are exempt from any of the requirements of the rules¹².

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the making of rules generally see PARA 1326 note 2. As from a day to be appointed, where a licensed body carries on an activity through a licensed conveyancer, the rules made under the Legal Services Act 2007 Sch 11 para 20 apply instead of those made under the Administration of Justice Act 1985 ss 22, 23: see the Legal Services Act 2007 s 104(2); and PARA 1511. As to the meaning of 'licensed body' see PARA 1476. At the date at which this volume states the law no such day had been appointed.

3 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

4 Administration of Justice Act 1985 s 22(1). See the Council for Licensed Conveyancers' Accounts Rules 2008 (16 January 2008) which came into operation on 1 January 2009 (r 1); and PARA 1354 et seq. As to the use of inclusive language in rules and regulations made by the Council see r 2.1.2; and PARA 1320 note 9. So far as is applicable these rules apply to probate practitioners in the provision of probate services: see the Licensed Conveyancers' Probate Rules 2008 r 9. As to the meaning of 'probate practitioners' and 'probate services' see PARA 1339 note 3.

Every licensed conveyancer must:

- 566 (1) comply with the Council for Licensed Conveyancers' Accounts Rules 2008 (r 3.1.1);
- 567 (2) ensure that all his partners, employees and directors (including partners, employees and directors who are not licensed conveyancers) comply with these rules (r 3.1.2);

- 568 (3) comply with the accounts guidance notes unless he has good reason not to do so in the particular circumstances (r 3.1.3);
- 569 (4) use each client's money only for that client's matters (r 3.1.4);
- 570 (5) establish and maintain proper accounting systems, procedures, processes and internal controls, to ensure compliance with these rules and the accounts guidance notes (r 3.1.5);
- 571 (6) ensure there is no debit balance on the client side of a client ledger account nor a credit balance on the office side of a client ledger account (r 3.1.6);
- 572 (7) remedy any breach of these rules without delay (r 3.1.7);
- 573 (8) account to the client as soon as possible after completion of any transaction or after a retainer has been terminated: (r 3.1.8).

In the case of a licensed conveyancer who no longer holds a licence or certificate of recognition, these rules apply as if that licence or certificate of recognition were still in force until such time as any relevant part of these rules has been fully and appropriately complied with: r 3.2. 'Licensed Conveyancer' means for the purposes of these rules: any person who has held or currently holds a licence issued by the Council to offer to the public conveyancing and other legal services regulated by the Council and holds or has at any time held or received client money in accordance with the Council's rules either in his own name or that of his practice; and a recognised body; 'client money' means any money held or received for a client by a licensed conveyancer incidental to the provision of services regulated by the Council; 'practice' means a licensed conveyancer who is a sole practitioner; or two or more licensed conveyancers in partnership; or a recognised body; 'recognised body' means a body corporate including a limited liability partnership recognised by the Council under the Administration of Justice Act 1985 s 32 (as to recognition under s 32 see PARA 1392) (including for the purposes of these rules a body corporate which has had issued to it a certificate of recognition, but is no longer so certificated); 'client' means any person or persons for whom a licensed conveyancer acts in the provision of services regulated by the Council; 'without delay' means, in normal circumstances, either on the same day or on the next working day; 'working day' means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory bank holiday; 'certificate of recognition' means a certificate issued by the Council to a body corporate recognised by the Council under the Administration of Justice Act 1985 s 32 (see PARA 1392 et seq); Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

'Accounts guidance notes' means guidance issued by the Council to facilitate compliance with these rules and the notes to these rules. At the date at which this volume states the law the Council had issued the following guidance notes: Accounts Guidance Note 1: Accountancy Bodies Recognised by the Council (16 January 2008); Accounts Guidance Note 2: Reporting Accountants' Terms of Engagement (16 January 2008); Accounts Guidance Note 3: Form of Accountant's Report and Checklist (16 January 2008). All of the guidance notes listed above are in force as of 1 January 2009.

5 'Client' means (1) in relation to a licensed conveyancer, any person by or on whose behalf instructions regarding the provision of conveyancing services are given to the licensed conveyancer or his firm; (2) in relation to a recognised body (see the Administration of Justice Act 1985 s 32; and PARA 1392 et seq), any person by or on whose behalf such instructions are given to the body: s 39(1). 'Client account' means an account in the title of which the word 'client' is required by rules under s 22(2) (see heads (1)-(3) in the text): s 39(1). As to the meaning of 'conveyancing services' see PARA 1319 note 2.

6 Administration of Justice Act 1985 s 22(2)(a). The rules must specify the institutions which are authorised for these purposes: s 22(2).

7 Administration of Justice Act 1985 s 22(2)(b).

8 Administration of Justice Act 1985 s 22(2)(c). As to interest on clients' money see PARA 1357. As to the application of rules so made to recognised bodies see PARA 1408. As to the meaning of 'recognised body' see PARA 1392 note 14.

9 Provision made in rules by virtue of s 22(3)(a) may provide that the reports delivered to the Council must be reports given by accountants in respect of whom requirements prescribed by the rules are met: s 22(4) (substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 11(b)).

10 Administration of Justice Act 1985 s 22(3)(a) (amended by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 11(a), Sch 23). As to the application of rules so made to recognised bodies see PARA 1408.

11 Administration of Justice Act 1985 s 22(3)(b).

12 Administration of Justice Act 1985 s 22(3).

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1354. Payments into, and withdrawals from, client accounts.

A licensed conveyancer¹ must without delay² pay client money³ held or received by him into a client account⁴. Money held in a client account must be available immediately, even at the sacrifice of interest, unless the client otherwise instructs⁵. Money held in separate designated accounts⁶ must not be aggregated with money held in other client accounts⁷.

Only client money may be paid into or held in a client account⁸ except: (1) such money belonging to the licensed conveyancer as may be necessary for the purpose of opening or maintaining the client account⁹; (2) money to replace any sum which for any reason has been or is about to be withdrawn from the account¹⁰, such money then becoming client money¹¹; (3) where the licensed conveyancer receives money and is in doubt as to whether it is wholly office money¹², in which case, he must pay such money into a client account but must ascertain and withdraw such part as is office money as soon as possible and in any event within one calendar month of receipt¹³.

Notwithstanding the provisions of the Council for Licensed Conveyancers' Accounts Rules 2008, a licensed conveyancer must not pay into a client account money¹⁴ which a client instructs the licensed conveyancer to withhold from such an account, such instruction being either on a durable medium¹⁵ from the client or acknowledged by the licensed conveyancer on a durable medium to the client¹⁶, or which has been withheld from a client account with the written authorisation of the Council¹⁷.

There must be withdrawn from a client account:

- 2026 (a) without delay following discovery, money that has been incorrectly paid into it¹⁸;
- 2027 (b) as soon as possible and in any event within one calendar month of receipt, office money paid into it, where it is uncertain whether it is wholly office money¹⁹;
- 2028 (c) without delay office money no longer necessary to maintain a client account²⁰;
- 2029 (d) within 28 days of the date on which a bill of costs is sent to a client, money held on account of costs²¹ and disbursements²², provided it is made clear to the client or the paying party on a durable medium either before or at the time the bill of costs is sent that such money will be applied towards or in payment of that bill of costs²³.

In addition to these withdrawals there may only be withdrawn from a client account money:

- 2030 (i) properly required for payment to or on behalf of a client²⁴;
- 2031 (ii) properly required for payment of a disbursement on behalf of a client²⁵;
- 2032 (iii) properly required in full or partial reimbursement of money already expended by the licensed conveyancer out of office account on behalf of a client²⁶;
- 2033 (iv) properly required in full or partial reimbursement of money for which the licensed conveyancer has incurred a liability to make a payment out of office account on behalf of a client²⁷;
- 2034 (v) which is transferred to another client account²⁸;

- 2035 (vi) where the Council has given written authority for a specific payment to be made to a nominated payee or where the Council has approved a scheme for automated payments direct from client account²⁹.

Money withdrawn under the foregoing rules must not exceed the total of the money held to the credit of both the client and the client account in which the money is held³⁰.

Undrawn costs or disbursements must not remain in a client account either in anticipation of future errors which could result in a shortage on that account or any current shortage on that account and are not available as a set off against any general shortage on client account³¹. Any withdrawal in favour of a licensed conveyancer must be recorded in both the client and office columns of the appropriate client ledger account³².

A withdrawal from a client account must be made as follows³³:

- 2036 (A) cheques or other written instructions for withdrawal from client bank account must be signed by an approved person³⁴;
 2037 (B) where CHAPS terminals or other electronic systems are used to withdraw monies from a client bank account and authority has not been given, such systems must be operated by an approved person³⁵;
 2038 (C) where payments are authorised electronically, such authority may only be given by an approved person³⁶.

A transfer of money from the ledger account of one client to that of another client may only be made if it would have been permissible under these rules for the money to be withdrawn from a client account in the case of the first client and for the money to be paid into a client account in the case of the second client³⁷.

A withdrawal from a client account in favour of a licensed conveyancer must be by way of a cheque to the licensed conveyancer or by way of a transfer to his office account³⁸. Withdrawals in cash are not permitted³⁹. Except with the prior written authority of both clients no sum in respect of a private loan⁴⁰ from one client to another may be paid out of funds held for the lender: to the borrower directly⁴¹; by a payment from one client account to another⁴²; or by a transfer from the ledger account of the lender to that of the borrower⁴³. All monies held in a client account must be paid promptly to the rightful recipient⁴⁴ when due⁴⁵.

1 As to the meaning of 'licensed conveyancer' see PARA 1353 note 4.

2 As to the meaning of 'without delay' see PARA 1353 note 4.

3 As to the meaning of 'client money' see PARA 1353 note 4.

4 Council for Licensed Conveyancers' Accounts Rules 2008 r 4.1. This rule is subject to the provisions of rr 4.4 (see text and notes 8-13) and 5.1 (see text and notes 14-17). 'Client account' means a current or deposit account (but not a share account) at a branch (or the head office) located in England or Wales of a Building Society or Bank in each case in the name of the practice of the licensed conveyancer and in the title of which account the word 'client' appears: r 2.1.3. 'Bank' means a person who has permission under the Financial Services and Markets Act 2000 Pt 4 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARAS 348-361) to accept deposits: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3. 'Building Society' means a branch situated in England and Wales of a building society incorporated (or deemed to be incorporated) under the Building Societies Act 1986 (see **FINANCIAL SERVICES AND INSTITUTIONS** vol 50 (2008) PARA 1856): Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

5 Council for Licensed Conveyancers' Accounts Rules 2008 r 4.2.

6 'Separate designated account' means an interest bearing account (but not a share account) at the branch (or the head office) located in England or Wales of a building society or bank in each case in the name of the practice of the licensed conveyancer, and in the title of which account the word 'client' and a reference to the

identity of the client or the matter concerned must appear: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

7 Council for Licensed Conveyancers' Accounts Rules 2008 r 4.3.

8 Client money includes money held or received: (1) as agent, bailee or stakeholder; (2) for payment of stamp duty land tax, Land Registry fees and telegraphic transfer fees (this does not become office money unless an obligation to pay out of the office account has been incurred and the payment is recorded in the office columns of the appropriate client ledger account); (3) as a payment on account of costs generally: Council for Licensed Conveyancers' Accounts Rules 2008 r 4.4 note (i). See also PARA 1353 note 4.

9 Council for Licensed Conveyancers' Accounts Rules 2008 r 4.4.1.

10 If withdrawn in breach of r 6.5 (see note 11): Council for Licensed Conveyancers' Accounts Rules 2008 r 4.4.2.

11 Council for Licensed Conveyancers' Accounts Rules 2008 r 4.4.2. The licensed conveyancer must replace without delay any such shortfall to a client or to a client account by payment into that account: r 6.5.

12 'Office money' means money which belongs to a licensed conveyancer and any other money which is not client money and includes: (1) money held or received in connection with running the practice e.g. PAYE, or VAT on the firm's fees; (2) interest on client accounts (other than on separate designated accounts); (3) payments received in respect of fees for which a bill has been delivered and the bill is recorded in the office columns of the appropriate client ledger account; (4) payments received in respect of disbursements already paid by the licensed conveyancer or for which a liability to pay has been incurred and the payment or liability is recorded in the office columns of the appropriate client ledger account; (5) money received from a client as a debt owed to the licensed conveyancer which is recorded in the office columns of the appropriate client ledger account: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

13 Council for Licensed Conveyancers' Accounts Rules 2008 r 4.4.3.

14 Council for Licensed Conveyancers' Accounts Rules 2008 r 5.1.

15 'Durable medium' means the method by which information is stored in a way accessible for future reference for no less than the period prescribed by the Council and which allows the unchanged reproduction of the information stored: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

16 Council for Licensed Conveyancers' Accounts Rules 2008 r 5.1.1.

17 Council for Licensed Conveyancers' Accounts Rules 2008 r 5.1.2.

18 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.1.1.

19 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.1.2. The money referred to in the text is that paid in in accordance with r 4.4.3: see text and note 13.

20 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.1.3.

21 'Costs' includes fees, charges, expenses and remuneration charged to the client by the licensed conveyancer and any value added tax element: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

22 'Disbursements' means any payment made or for which a liability to pay has been incurred by a licensed conveyancer to a third party on behalf of a client, includes stamp duty land tax, land registry fees, local authority and any other applicable search fees: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

23 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.1.4. Withdrawals out of a client account under this rule and rr 6.2.3 and 6.2.4 must be specific sums relating to costs or disbursements; round sum withdrawals on account of costs or disbursements are not permitted: r 6.3.

24 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.2.1.

25 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.2.2.

26 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.2.3. 'Office account' means an account in the name of a licensed conveyancer or his practice for holding office money: r 2.1.3. See also note 24.

- 27 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.2.4. See also note 24.
- 28 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.2.5.
- 29 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.1.6.
- 30 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.4.
- 31 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.6.
- 32 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.7. Withdrawals should be recorded in accordance with r 7: see PARA 1355.
- 33 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.8. Authority in accordance with r 6.8 is required for the transfer of money from one client account to another client account at the same bank or building society except where either is a separate designated account: r 6.9.
- 34 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.8.1.
- 35 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.8.2.
- 36 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.8.3.
- 37 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.10.
- 38 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.11.
- 39 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.12.
- 40 'Private Loan' means a loan other than one provided by an institution which provides loans in the normal course of its activities: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.
- 41 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.13.1.
- 42 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.13.2.
- 43 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.13.3.
- 44 'Rightful recipient' means the person entitled to receive monies held by the licensed conveyancer: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.
- 45 Council for Licensed Conveyancers' Accounts Rules 2008 r 6.14.

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1355. Records of accounts, etc.

A licensed conveyancer¹ must at all times keep accounting records² promptly and properly written up to show clearly all his dealings with client money³ received, held or paid by him, including client money withheld from a client account⁴, and any office money⁵ relating to any client⁶ matter⁷. Such records must be sufficient to show and explain accurately every transaction relating to each client, and disclose at any time the licensed conveyancer's total indebtedness to each client and also each client's total indebtedness to the licensed conveyancer⁸. All dealings with client money must be appropriately recorded⁹.

If separate designated accounts¹⁰ are used:

- 2039 (1) a combined cash account must be kept in order to show the total amount held in separate designated accounts¹¹;
- 2040 (2) a record of the amount held for each client must be made either in a deposit column of a client ledger account, or on the client side of a client ledger account kept specifically for a separate designated account, for each client¹²; and
- 2041 (3) upon receipt of information that interest has been credited to the separate designated account, corresponding entries must be made in the accounting records¹³.

The current balance on each client and office ledger account must always be shown, or be readily ascertainable from accounting records¹⁴. All dealings with office money relating to any client must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account¹⁵. When acting for both lender and borrower in a mortgage transaction between them, separate client ledger accounts for both clients need not be opened provided that the funds belonging to each client are clearly identifiable and the lender is an institutional lender which provides mortgages in the normal course of its activities¹⁶.

A licensed conveyancer must retain on a durable medium¹⁷ a central record or file of copies of all bills of costs distinguishing in each bill between costs¹⁸, paid disbursements¹⁹ and disbursements not yet paid at the date of the bill and VAT²⁰.

A licensed conveyancer must, at least once in each calendar month:

- 2042 (a) prepare a bank reconciliation statement by comparing the balance on the client cash account with the balances shown on the client bank statements and passbooks (after allowing for all unrepresented items) of all client accounts and separate designated accounts and any client money held by the licensed conveyancer in cash²¹;
- 2043 (b) as at the same date prepare a listing of all the balances shown by the client and office ledger accounts and compare the total of the client ledger credit balances with the balance on the client bank reconciliation statement²²; and
- 2044 (c) prepare a reconciliation statement showing the cause of the differences (if any) shown by each of the above comparisons²³.

These steps must be prepared to a date not more than five weeks after the date to which they were last prepared, and completed within seven days of the date to which they are prepared²⁴.

Records maintained in accordance with the foregoing rules²⁵ must be kept separate from those for any other business, and where the accounts of more than one business are maintained on the same system, they must be capable of being reproduced independently²⁶. The licensed conveyancer must ensure that he has at all times immediate and unrestricted access to his accounting records²⁷.

A licensed conveyancer must retain on a durable medium for at least six years from the date of the last entry all documents or other records required by the foregoing rules²⁸, and must retain for at least two years:

- 2045 (i) all paid cheques, unless any relevant bank²⁹ or building society³⁰ has agreed on a durable medium that it will retain such cheques or copies of the cheques on a durable medium on his behalf for that period³¹;
- 2046 (ii) originals or copies of all other authorities for the withdrawal of money from a client account³²; and

All statements and passbooks, as printed by the bank or building society for client accounts, separate designated accounts, accounts in which client money has been held and any office account of the licensed conveyancer must be retained for at least six years from the date of the last entry³³.

The Council for Licensed Conveyancers³⁴ must be notified without delay³⁵ upon discovery of any misappropriation of client money³⁶.

1 As to the meaning of 'licensed conveyancer' see PARA 1353 note 4.

2 'Accounting records' include all documents or records on a durable medium necessary for the operation of any system of book-keeping: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

3 As to the meaning of 'client money' see PARA 1353 note 4.

4 Is a client account under the Council for Licensed Conveyancers' Accounts Rules 2008 r 5.1: see PARA 1354. As to the meaning of 'client account' see PARA 1354 note 4.

5 As to the meaning of 'office money' see PARA 1354 note 12.

6 As to the meaning of 'client' see PARA 1353 note 5.

7 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.1.

8 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.2.

9 See the Council for Licensed Conveyancers' Accounts Rules 2008 r 7.3. 'Appropriately recorded' means in a client cash account or in a record of sums transferred from one client ledger account to another; and on the client side of a separate client ledger account for each client or for each client matter; with sufficient narrative on the ledger and cash account to explain each entry: r 7.3.

10 As to the meaning of 'separate designated accounts' see PARA 1354 note 6.

11 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.4.1.

12 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.4.2.

13 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.4.3.

14 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.5.

15 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.6.

16 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.7.

17 As to the meaning of 'durable medium' see PARA 1354 note 15.

- 18 As to the meaning of 'costs' see PARA 1354 note 22.
- 19 As to the meaning of 'disbursements' see PARA 1354 note 23.
- 20 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.8.
- 21 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.9.1.
- 22 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.9.2.
- 23 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.9.3.
- 24 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.10.
- 25 Ie the Council for Licensed Conveyancers' Accounts Rules 2008 rr 7.1-7.9: see text and notes 1-23.
- 26 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.11.
- 27 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.12.
- 28 Ie the Council for Licensed Conveyancers' Accounts Rules 2008 rr 7.1-7.9: see text and notes 1-23.
- 29 As to the meaning of 'bank' see PARA 1354 note 4.
- 30 As to the meaning of 'building society' see PARA 1354 note 4.
- 31 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.14.1.
- 32 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.14.2.
- 33 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.15.
- 34 As to the Council for Licensed Conveyancers see PARA 1320 et seq.
- 35 As to the meaning of 'without delay' see PARA 1353 note 4.
- 36 Council for Licensed Conveyancers' Accounts Rules 2008 r 7.16.

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1356. Monitoring by the Council for Licensed Conveyancers.

In order to monitor compliance with the Council for Licensed Conveyancers¹ rules, a licensed conveyancer² must at a time and place determined by the Council produce to any person appointed by the Council all information held on a durable medium³ relating to his practice⁴ (to include his accounting records⁵, papers, files and financial accounts) reasonably required to enable the preparation of a report to the Council. ⁶

The Council is entitled to seek verification from clients⁷, staff and the licensed conveyancer's banks⁸ or building societies⁹, and the licensed conveyancer must, if necessary, provide written permission for such information to be given¹⁰. Save with the permission of the licensed conveyancer, the Council may not remove original documents from the licensed conveyancer's premises but must be provided with photocopies on request¹¹.

Where, following an inspection¹², it appears to the Council that there is reason to believe that a licensed conveyancer has failed to comply with a provision of these rules, the Council may require that licensed conveyancer to pay a reasonable sum as is determined by the Council to cover the cost of a further inspection¹³.

Any report made by the Council's appointee may be sent by the Council to the Crown Prosecution Service¹⁴ or the Serious Organised Crime Agency¹⁵ or to any of the accountancy bodies recognised by the Council, and may be used as the basis for a preliminary investigation of a disciplinary case¹⁶ and may be taken into account by the Council in relation to the possible disqualification of a reporting accountant¹⁷.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'licensed conveyancer' see PARA 1353 note 4.

3 As to the meaning of 'durable medium' see PARA 1354 note 15.

4 As to the meaning of 'practice' see PARA 1353 note 4.

5 As to the meaning of 'accounting records' see PARA 1355 note 2.

6 Council for Licensed Conveyancers' Accounts Rules 2008 r 8.1. For the purposes of r 8.1, accounting records held on a durable medium must be produced and made available to the Council's appointee in the manner required by the Council: r 8.2.

7 As to the meaning of 'client' see PARA 1353 note 4.

8 As to the meaning of 'bank' see PARA 1354 note 4.

9 As to the meaning of 'building society' see PARA 1354 note 4.

10 Council for Licensed Conveyancers' Accounts Rules 2008 r 8.3.

11 Council for Licensed Conveyancers' Accounts Rules 2008 r 8.4.

12 Ie an inspection instituted under the Council for Licensed Conveyancers' Accounts Rules 2008 r 8.1: see text and notes 1-6.

13 Council for Licensed Conveyancers' Accounts Rules 2008 r 8.5.

14 As to the Crown Prosecution Service see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1079.

15 As to the Serious Organised Crime Agency see **POLICE** vol 36(1) (2007 Reissue) PARA 430 et seq.

16 le under the Administration of Justice Act 1985 s 24: see PARA 1359.

17 Council for Licensed Conveyancers' Accounts Rules 2008 r 8.6. As to the disqualification of a reporting accountant see r 10.8; and PARA 1358.

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1357. Interest on clients' money.

Rules¹ relating to client accounts² must make provision for requiring a licensed conveyancer³ who has received money from a client to account, in such cases as may be prescribed by the rules, to the person who is or becomes entitled to the money for the interest which was, or could have been, earned by putting the money in a separate deposit account at an authorised⁴ institution⁵. Where a licensed conveyancer is required by such rules to place any sum of money in a separate deposit account but fails to do so as soon as is reasonably practicable, the Council may give a direction requiring him to account to the client in question for any interest which has not been earned but which would have been earned if that sum had been so placed in such an account⁶.

Except as provided by any rules so made, a licensed conveyancer who maintains a client account⁷ in which he keeps money received or held for or on account of his clients generally is not liable to account to any person for interest received by him on money in that account⁸.

When a licensed conveyancer⁹ holds client money¹⁰ in a separate designated account¹¹ the licensed conveyancer must seek a reasonable rate of interest on money held in that account and must account to the client for all interest earned on that account¹².

When a licensed conveyancer holds money for a client¹³ in a client account¹⁴ other than in a separate designated account or if money should have been held in a client account but was not so held, the licensed conveyancer must account to the client for a sum in lieu of interest calculated at the sole expense of the licensed conveyancer¹⁵ for such period as the Council may determine¹⁶.

Without prejudice to any other remedy, a client may apply to the Council for a direction as to whether or not interest should have been earned in respect of client money held on his behalf by a licensed conveyancer, and if the Council directs that interest should have been earned then it may issue a direction as to the sum that should be paid by the licensed conveyancer to the client in lieu of interest¹⁷.

If the Council directs¹⁸ that such a sum must be paid, the licensed conveyancer must within 15 days of the Council sending notification of that direction pay to the client the amount so directed¹⁹.

Nothing in the foregoing rules affects any arrangement made in writing between a licensed conveyancer and his client as to the application of client money or the payment of interest on it²⁰. However, a licensed conveyancer must act fairly towards his client and provide sufficient information in writing to enable the client to give informed consent in such a situation, including expressly drawing his client's attention to any contracting out provision which may be contained in terms of engagement²¹.

1 The rules made under the Administration of Justice Act 1985 s 22(2): see PARA 1353. As to the making of rules generally see PARA 1326 note 2. As from a day to be appointed, where a licensed body carries on an activity through a licensed conveyancer, the rules made under the Legal Services Act 2007 Sch 11 para 20 apply instead of those made under the Administration of Justice Act 1985 ss 22, 23: see the Legal Services Act 2007 s 104(2); and PARA 1511. As to the meaning of 'licensed body' see PARA 1476. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'client account' and 'client' see PARA 1353 note 5.

- 3 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.
- 4 Ie an institution authorised for the purposes of rules under the Administration of Justice Act 1985 s 22(2)(a): see PARA 1353.
- 5 Administration of Justice Act 1985 s 23(1). The cases in which a licensed conveyancer may be required to account for interest by rules made by virtue of s 23(1) may be defined by reference to, among other things, the amount of the sum held or received by him or the period for which it is likely to be retained, or both; and any such rules may include provision for enabling a client, without prejudice to any other remedy, to require that any question arising under the rules in relation to the client's money be referred to and determined by the Council: s 23(2). As to the application of rules so made to recognised bodies see PARA 1408. As to the meaning of 'recognised body' see PARA 1392 note 14.
- 6 Courts and Legal Services Act 1990 s 53(7), Sch 8 paras 1, 22. This power has been delegated by the Council to the Investigating Committee: see the Council For Licensed Conveyancers' Investigating Committee Rules 2004 r 6. As to the Investigating Committee see PARA 1359 et seq.
- 7 Ie in pursuance of the Administration of Justice Act 1985 s 22(2)(a): see PARA 1353.
- 8 Administration of Justice Act 1985 s 23(3). However, nothing in s 23 or in rules under s 22(2) (see PARA 1353) affects any arrangement in writing between a licensed conveyancer and his client as to the application of the client's money or the payment of interest on it: s 23(4).
- 9 As to the meaning of 'licensed conveyancer' see PARA 1353 note 4.
- 10 As to the meaning of 'client money' see PARA 1353 note 4.
- 11 As to the meaning of 'separate designated account' see PARA 1354 note 6.
- 12 Council for Licensed Conveyancers' Accounts Rules 2008 r 9.1.
- 13 As to the meaning of 'client' see PARA 1353 note 5.
- 14 As to the meaning of 'client account' see PARA 1354 note 4.
- 15 Where such a sum in lieu of interest is payable, it must be calculated on the amount of the balance or balances held over the whole period during which such balance or balances were cleared at a rate not less than the greater (at the bank or building society where the money is held) of the rate of interest payable on a separate designated account on the amount or amounts held, or the published rate obtainable for the amount or amounts held by a member of the general public for a deposit on similar terms: Council for Licensed Conveyancers' Accounts Rules 2008 r 9.5. As to the meaning of 'bank' and 'building society' see PARA 1354 note 4.
- 16 Council for Licensed Conveyancers' Accounts Rules 2008 r 9.2. A licensed conveyancer is not required to pay to a client a sum in lieu of interest if the amount calculated is £20 or less: r 9.3. If a sum greater than £20 in lieu of interest is payable, the whole of the calculated amount must be paid and the first £20 must not be retained, whether by reference to r 9.3 or to cover the expense of accounting: r 9.4.
- 17 Council for Licensed Conveyancers' Accounts Rules 2008 r 9.6.
- 18 Ie pursuant to the Courts and Legal Services Act 1990 Sch 8 para 22 (see PARA 1357): Council for Licensed Conveyancers' Accounts Rules 2008 r 9.7.
- 19 Council for Licensed Conveyancers' Accounts Rules 2008 r 9.7.
- 20 Council for Licensed Conveyancers' Accounts Rules 2008 r 9.8.
- 21 Council for Licensed Conveyancers' Accounts Rules 2008 r 9.9.

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1358. Accountant's reports.

Every licensed conveyancer¹ who has at any time during an accounting period² held or received client money³ must procure the delivery by the reporting accountant⁴ to the Council for Licensed Conveyancers⁵ of an accountant's report⁶ for that period⁷. The accountant's report must be delivered to the Council within six months of the end of the accounting period⁸.

A licensed conveyancer who has two or more places of business need not have the same accounting period for all of them⁹. If separate accounting periods are chosen, he must provide a separate accountant's report for each place of business, and if the same accounting period is chosen for all places of business, he may provide either separate accountant's reports or a single composite accountant's report¹⁰. A licensed conveyancer must immediately notify the Council of any changes to the identity, address and other relevant details of the reporting accountant¹¹.

An accountant is qualified to sign and give an accountant's report on behalf of a licensed conveyancer if he is a member of an accountancy body recognised by the Council and holds a current practising certificate issued by that body when he signs the report¹². An accountant is not qualified to give an accountant's report if:

- 2047 (1) either at any time between the beginning of the accounting period to which the accountant's report relates and the signing of the accountant's report he was a partner, employee or officer in the practice to which the accountant's report relates or was employed by the same employer as the licensed conveyancer for whom the accountant's report is given¹³; or
- 2048 (2) he has been disqualified and has been given by the Council notice of disqualification which has not been withdrawn¹⁴.

A licensed conveyancer must ensure that his reporting accountant's rights and duties are stated in terms of engagement, which must include such terms as are prescribed by the Council, and which must, together with a copy be signed by the licensed conveyancer and the reporting accountant with the copy being retained by the licensed conveyancer¹⁵.

The place of examination of a licensed conveyancer's accounting records and other relevant documents must be the licensed conveyancer's office and not that of the reporting accountant¹⁶. The licensed conveyancer must provide the reporting accountant with details of all accounts kept or operated by him in connection with his practice¹⁷ at any bank¹⁸ or building society¹⁹ at any time during the accounting period to which the accountant's report relates, including client accounts²⁰, office accounts²¹ and accounts which are not client accounts but which contain client money²².

The reporting accountant:

- 2049 (a) must examine the licensed conveyancer's accounting records to ensure compliance with these rules and carry out the checks and tests prescribed by the Council²³;
- 2050 (b) must sign and deliver to the Council the accountant's report together with the completed checklist in the form prescribed by the Council²⁴;

2051 (c) may qualify his accountant's report if, having carried out his obligations, he is not satisfied that the licensed conveyancer whose accounting records he has examined has complied fully with these rules²⁵, except for trivial breaches caused by clerical errors or mistakes in book-keeping all of which were rectified on discovery and none of which appeared to have resulted in loss to any client²⁶.

1 As to the meaning of 'licensed conveyancer' see PARA 1353 note 4.

2 'Accounting period' means the period for which the accounts of the licensed conveyancer are ordinarily made up provided however that it must begin at the end of the previous accounting period and cover 12 months except with the prior written consent of the Council: Council for Licensed Conveyancers' Accounts Rules 2008 r 10.3.

3 As to the meaning of 'client money' see PARA 1353 note 4.

4 'Reporting accountant' means an accountant qualified in accordance with the Council for Licensed Conveyancers' Accounts Rules 2008 r 10.6 (see text and note 12) instructed by the licensed conveyancer to prepare and sign an accountant's report: r 2.1.3.

5 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

⁶ 'Accountant's report' means a report signed by the reporting accountant in such form as the Council may determine relating to client money held or received by each practice in respect of each accounting period: Council for Licensed Conveyancers' Accounts Rules 2008 r 2.1.3.

7 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.1.

8 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.2. Except that where on the date of coming into force of these rules, a licensed conveyancer's accounting period has already ended but no accountant's report in respect of that period has been delivered to the Council, the form of accountant's report to be delivered must be that prescribed by the licensed conveyancers' accounts, deposit interest and Accountant's Report Rules 2008: r 10.2.

9 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.4.

10 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.4.

11 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.5.

12 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.6. At the date this volume states the law, the following accountancy bodies were recognised by the Council: (1) the Institute of Chartered Accountants in England and Wales; (2) the Institute of Chartered Accountants of Scotland; (3) the Institute of Chartered Accountants in Ireland; (4) the Association of Chartered Certified Accountants; (5) the Association of Authorised Public Accountants: see Accounts Guidance Note 1: Accountancy Bodies Recognised by the Council (16 January 2008); and PARA 1353 note 4.

13 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.7.1.

14 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.7.2. The Council may disqualify an accountant from giving an accountant's report if he has been found guilty by the disciplinary tribunal of his professional body of professional misconduct or discreditable conduct; or it is satisfied that the reporting accountant has failed in his accountant's report to properly identify and explain to the satisfaction of the Council any breaches of these rules: r 10.8. In coming to such a decision the Council must take into account any representations made by the accountant and his professional body: 10.9. The Council must notify any licensed conveyancer likely to be affected by an accountant's disqualification, and may also publish notification of such disqualification in the Council's 'Chronicle' or other publication: r 10.10.

15 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.11. See further Accounts Guidance Note 2: Reporting Accountants' Terms of Engagement (16 January 2008); and PARA 1353 note 4.

16 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.12.

17 As to the meaning of 'practice' see PARA 1353 note 4.

18 As to the meaning of 'bank' see PARA 1354 note 4.

- 19 As to the meaning of 'building society' see PARA 1354 note 4.
- 20 As to the meaning of 'client account' see PARA 1354 note 4.
- 21 As to the meaning of 'office account' see PARA 1354 note 27.
- 22 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.13.
- 23 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.14.
- 24 Council for Licensed Conveyancers' Accounts Rules 2008 r 10.15. See further Accounts Guidance Note 3: Form of Accountant's Report and Checklist (16 January 2008); and PARA 1353 note 4.
- 25 Including any case to which the Council for Licensed Conveyancers' Accounts Rules 2008 r 11.1 applies: r 10.16.
- ²⁶ Council for Licensed Conveyancers' Accounts Rules 2008 r 10.16.

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(6) DISCIPLINARY AND OTHER PROCEEDINGS

(i) The Investigating Committee

1359. Preliminary investigation of disciplinary cases.

The Council for Licensed Conveyancers¹ has established the Investigating Committee², for the preliminary investigation of cases in which³:

- 2052 (1) it is alleged that a licensed conveyancer has:
35
- 26. (a) (whether while a licensed conveyancer or not) been convicted by any court in the United Kingdom⁴ of a criminal offence which renders him unfit to practise as a licensed conveyancer⁵; or
 - 27. (b) while holding a current licence⁶, failed to comply with any condition to which that licence was subject⁷; or
 - 28. (c) failed to comply with any rules made⁸ by the Council⁹; or
- 36
- 2053 (2) a complaint is made to the Council by or on behalf of a member of the public about a licensed conveyancer¹⁰,

with a view to determining whether such cases ought to be referred by the Investigating Committee to the Discipline and Appeals Committee¹¹ for hearing and determination by that committee¹².

Where it appears to the Investigating Committee (i) that any such allegation or complaint ought to be referred to the Discipline and Appeals Committee; and (ii) that it is necessary for the protection of consumers to do so, the Investigating Committee may, if it thinks fit, direct that any licence held by the licensed conveyancer in question be suspended until the allegation or complaint is determined by the Discipline and Appeals Committee or until the expiration of such period as may be prescribed by rules made by the Council, whichever is the earlier¹³.

As from a day to be appointed, before making such a direction, the Investigating Committee must give the licensed conveyancer an opportunity to make representations against the making of the proposed direction¹⁴. Where such a direction has been made, the licensed conveyancer may appeal to the Discipline and Appeals Committee, and on any such appeal that committee may make such order as it thinks fit¹⁵. Where such an order is made by the Discipline and Appeals Committee the person against whom the order is made, and if not the same, the Council may appeal against the order to the High Court¹⁶, which may make such order as it thinks fit¹⁷. The decision of the High Court is final¹⁸. At the date at which this volume states the law, no such day had been appointed.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 The Council must make rules as to the constitution of the Investigating Committee and any such rules may provide for the appointment to the committee of persons (whether licensed conveyancers or not) who are not members of the Council: Administration of Justice Act 1985 s 24(4). See the Council for Licensed Conveyancers'

Investigating Committee Rules 2004 (5 May 2004) which came into force on 19 July 2004 (r 1); and PARA 1360. As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. As to the making of rules generally see PARA 1326 note 2; and as to delegation to committees see PARA 1323. As to the use of inclusive language in rules and regulations made by the Council see PARA 1320 note 9.

3 Administration of Justice Act 1985 s 24(1). As from a day to be appointed s 24(1) is amended by the Legal Services Act 2007 ss 182, 210, Sch 17, Pt 1 paras 1, 12(1), (2), Sch 23 to replace the reference to 'the preliminary investigation' with a reference to 'consideration', and to repeal s 24(1)(b) and the final clause of the provision (see text and notes 11, 12). As from that day the Administration of Justice Act 1985 s 24(1A) is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 12(3) to require the Investigating Committee to make a preliminary investigation of an allegation under the Administration of Justice Act 1985 s 24(1) and either hear and determine the allegation, or refer the allegation to the Discipline and Appeals Committee established under s 25 (see PARA 1362) for hearing and determination by that committee under s 26 (see PARA 1378). As to the determination of allegations by the Investigating Committee see PARA 1360. Additionally, as from that day the Council must make rules as to the cases in which the Investigating Committee may hear and determine an allegation, and the cases in which they must refer an allegation to the Discipline and Appeals Committee: s 24(4A) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 12(1), (6)). At the date at which this volume states the law no such day had been appointed.

4 As to the meaning of 'United Kingdom' see PARA 1063 note 13.

5 Administration of Justice Act 1985 s 24(1)(a)(i). As to the meaning of 'practising as a licensed conveyancer' see PARA 1319 note 3.

6 Is a licence in force under the Administration of Justice Act 1985 Pt II (ss 11-39): see PARAS 1319 et seq, 1362 et seq. As to the meaning of 'licence' see PARA 1319 note 3.

7 Administration of Justice Act 1985 s 24(1)(a)(ii). As to conditional licences see PARAS 1330-1331.

8 Is under the Administration of Justice Act 1985 Pt II: see PARAS 1319 et seq, 1362 et seq.

9 Administration of Justice Act 1985 s 24(1)(a)(iii).

10 Administration of Justice Act 1985 s 24(1)(b) (prospectively repealed: see note 3). For the purposes of s 24(1)(b), a complaint about a person who, at the time when the conduct to which the complaint relates took place, was an employee or associate of a licensed conveyancer, is treated as a complaint about the licensed conveyancer: s 24(2) (prospectively repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 12(1), (4), Sch 23). As to the meaning of 'associate' see PARA 1348 note 4.

Any reference in s 24(1) or (2) to a licensed conveyancer in relation to any such allegation or complaint as is mentioned in s 24(1)(a)(ii) or (iii) or (b) includes a reference to a person who was a licensed conveyancer at the time when the conduct to which the allegation or complaint relates took place: s 24(3) (prospectively amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 12(1), (5)(a), Sch 23).

11 Is the Discipline and Appeals Committee established under the Administration of Justice Act 1985 s 25: see PARA 1362.

12 Administration of Justice Act 1985 s 24(1) (as prospectively amended: see note 3). The hearing or determination is under s 26: see PARA 1378.

A reference in the form of an allegation or complaint by the Investigating Committee to the Discipline and Appeals Committee under s 24 must be made in writing, specify the statutory provision under which it is made, and set out the allegation or complaint and a summary of the facts relied on to support it: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3(1). A copy of such a reference or complaint must be served on the respondent, together with a copy of the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001, and a copy lodged with the chairman of the committee, within 14 days of the making of the reference or the decision to make the complaint: r 3(2). As to the statutory instrument containing those rules see PARA 1365 note 12. As to the Council for Licensed Conveyancers see PARA 1320 et seq. As to the procedure which then pertains see PARA 1364 et seq. As to the meaning of 'respondent' see PARA 1367 note 8.

13 Administration of Justice Act 1985 s 24(5). As from a day to be appointed s 24(5) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 12(1), (7) to remove any references to a 'complaint'.

14 Administration of Justice Act 1985 s 24(6) (s 24(6)-(12) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 12(1), (8)). In relation to proceedings under s 24(6), the Investigating Committee may make such order as it thinks fit as to the payment of costs by the Council, or the licensed conveyancer: s 24(7) (as so prospectively added). Where such an order is made as to the payment of costs the Council or the licensed conveyancer may appeal to the Discipline and Appeals Committee, and on any such

appeal the committee may make such order as it thinks fit: s 24(9) (as so prospectively added). Such an order is then subject to appeal to the High Court: see text and notes 19-21.

- 15 Administration of Justice Act 1985 s 24(8) (as prospectively added: see note 14).
- 16 Administration of Justice Act 1985 s 24(10) (as prospectively added: see note 14).
- 17 Administration of Justice Act 1985 s 24(11) (as prospectively added: see note 14).
- 18 Administration of Justice Act 1985 s 24(12) (as prospectively added: see note 14).

UPDATE

1359 Preliminary investigation of disciplinary cases

NOTES 3, 13, 14--Day appointed is 31 March 2009: SI 2009/503.

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1360. Constitution and powers of the Investigating Committee.

The Council for Licensed Conveyancers¹ must select an Investigating Committee consisting of five members who may or may not be members of the Council, including a minimum of two and a maximum of three licensed conveyancers².

When the first members of the committee are selected by the Council, two members, one of whom must be a licensed conveyancer, must be selected to serve for an initial term of office of two years³; and the remaining three members must be selected to serve for an initial term of office of three years⁴. Thereafter all members selected have a term of office of three years from the date of their respective appointments⁵.

The members of the committee must elect one of their number as chairman who will hold that office until the expiry of his term as a member of the committee unless a vacancy occurs⁶ or he resigns his office⁷. A majority of members may elect a new chairman⁸ at any time if the chairman resigns his office⁹, is suspended¹⁰ or where a vacancy otherwise occurs¹¹. A member of the committee is eligible for re-selection¹². Under prescribed circumstances a person is not eligible for selection to the committee¹³.

A vacancy in the office of chairman or a member of the committee automatically occurs and his right to hold office ceases immediately under prescribed circumstances¹⁴. In the event that such a vacancy occurs, the secretary to the committee¹⁵ must as soon as possible inform each member of the committee of that fact and such fact must be noted at the next meeting of the committee and of the Council¹⁶, and the Council will as soon as possible select a member to serve on the committee for the remainder of the term of office of the member he has replaced¹⁷.

The Council must pay to the chairman and members of the committee attendance fees and reasonable expenses¹⁸.

Proceedings of the committee are governed by standing orders¹⁹.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Council for Licensed Conveyancers' Investigating Committee Rules 2004 rr 2.1, 2.2. Subject to the rules which disqualify a person from selection (see r 7.1; and text and note 13), any nomination for membership of the committee must be made with the consent of the nominee in writing to the director of the Council by at least one Council member (other than the nominee) (r 8.1). All members of the Council, including the chairman of the Council, attending in person are eligible to vote in the selection of members of the committee, and no member is entitled to vote by post or by proxy (r 8.2). If the number of nominations received is less than or equal to the number of members to be selected any such nominee may be selected as a member of the committee by a majority of Council members attending and voting at a meeting of the Council on a show of hands (r 8.3). If there are no nominations or the number of such nominations is less than the vacancies to be filled, a person may nevertheless be selected as a member of the committee upon the nomination of the chairman of the Council by a majority of the Council members attending and voting at a meeting of the Council on a show of hands subject to the right of the person so nominated to decline nomination before the vote is taken (r 8.4). If there are more nominations than vacancies available there must be a selection by a paper ballot conducted in secrecy by each member of the Council voting making a mark on the ballot paper against the name of any nominee for whom he wishes to vote. The Secretary to the committee must collect and in the presence of the candidates count the votes and immediately announce to the Council the results of the selection. The nominees selected as members of the committee are those with the highest votes in descending order until all vacancies have been filled. In the event of an equality of votes for the last vacancy to be filled a second ballot is taken but if the last vacancy is not then filled the selection must be determined by lot, the draw

being made by the chairman of the Council (r 8.5). Each member of the committee so selected takes office immediately after selection (r 8.6).

3 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 2.3(a)(i).

4 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 2.3(a)(ii).

5 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 2.3(b).

6 If a vacancy under the Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 3.1: see text and note 14.

7 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 2.4. At the first meeting of the committee after the coming into force of these rules or where there is a vacancy in the office of chairman, the election of a chairman must be the first item of business at any meeting of the committee: r 9.1. All members of the committee are eligible for election as chairman, and all members attending in person are eligible to vote (and no member may vote by post or proxy): rr 9.2, 9.3. Nominations for chairman may with the consent of the nominee be made at the beginning of the meeting at which the chairman is to be elected: r 9.4. If there are two or more nominations for the office of chairman there must be an election by a paper ballot conducted in secret by each member of the committee voting making a mark on the ballot paper against the name of any nominee for whom he wishes to vote. The secretary to the committee must collect and in the presence of the candidates count the voting papers and must immediately announce to the committee the result of the election. The candidate with the highest vote will be chairman. In the event of an equality of votes in the election of the chairman a second ballot will be taken but if a clear winner is not established the election must be determined by lot, the draw being made by a member of the committee who is not a candidate: r 9.5. The chairman takes office immediately after his election: r 9.6.

8 If in accordance with the Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 9: see note 7.

9 If he resigns his office as chairman, subject to these rules, the chairman may remain a member of the committee and may participate in the election of a new chairman: Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 2.5.

10 The chairman or other member of the committee is suspended with immediate effect in the event that: (1) he is charged with any offence referred to in r 3.1(f) (see note 14); or (2) he is served with a bankruptcy petition or issues a bankruptcy petition on his own behalf; or (3) he receives notice of any application against him for an order under r 3.1(i)(ii), (j) (see note 14): r 10.1.

Any such suspension is automatically revoked in the following circumstances: (a) under head (1) above in the event that the charge is dismissed, discharged, discontinued or otherwise withdrawn; (b) under head (2) above if the bankruptcy petition is disposed of without a declaration of bankruptcy being made against him; (c) under head (3) above in the event that the application is withdrawn or dismissed or the only order made is for the payment of costs: r 10.2.

The Council may by a majority remove the chairman or any member of the committee who has breached the Investigating Committee's Standing Orders (as to the Investigating Committee see PARA 1359), or the Code of Conduct (see PARA 1342 et seq): r 10.3

11 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 2.6.

12 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 2.6.

13 See the Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 7.1. A person is not eligible for selection to the committee if:

574 (1) as a person to be selected as a licensed conveyancer member he does not hold a current licence (r 7.1(a));

575 (2) he is chairman of the Council (r 7.1(b));

576 (3) he has been convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence (the regulations refer to a 'serious arrestable offence' as defined by the Police and Criminal Evidence Act 1984 s 116, which provision is repealed by the Serious Organised Crime and Police Act 2005 Sch 7. As to indictable offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1102 et seq) unless the conviction is spent within the meaning of the Rehabilitation of Offenders Act 1974 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq) (r 7.1(c));

- 577 (4) he is or has been an undischarged bankrupt or has made a composition or arrangement with his creditors unless: (a) the bankruptcy order is annulled either on the ground that he ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment; or (b) in the case of a composition or arrangement with his creditors, he pays his debts in full on the date on which payment is completed or on the expiration of five years from the date on which the terms of the deeds of composition or arrangement are fulfilled (r 7.1(d));
- 578 (5) the Mental Health Act 1983 Pt VII (repealed) (management of property and affairs of patients) applies (r 7.1(e));
- 579 (6) an order has been made against him by the Council's Discipline and Appeals Committee (other than an order which provides only for the payment of costs by him) or a direction is made by that committee pursuant to the Courts and Legal Services Act 1990 Sch 8 para 17(2) (see PARA 1383), unless in either case more than six years have passed since the order was made (r 7.1(f));
- 580 (7) the Council's powers of intervention have been exercised against him or his practice in accordance with the Administration of Justice Act 1985 Sch 5, Pt 1 (see PARA 1384) unless more than six years have passed since such powers were exercised (r 7.1(g));
- 581 (8) the Council is satisfied that as a member of another profession an adverse determination has been made against him by a disciplinary tribunal or committee established to regulate the activities and/or the conduct of members of his profession (other than an order which provides only for the payment of costs by him), unless more than six years have passed since the order was made and if he has been disqualified from holding a licence or practising certificate (as the case may be) for a period longer than six years, his licence or practising certificate has been restored (r 7.1(h)); or
- 582 (9) he is an employee, self-employed officer or general consultant of any organisation having as its main object the protection or promotion of the interests of licensed conveyancers or the defence of its members (r 7.1(i)).

14 See the Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 3.1. The prescribed circumstances are:

- 583 (1) on his death (r 3.1(a));
- 584 (2) on receipt by the Council of his written resignation (r 3.1(b));
- 585 (3) on the expiration of his term of office as a member of the committee (r 3.1(c));
- 586 (4) on his appointment as chairman of the Council (r 3.1(d));
- 587 (5) if, without the consent of the committee given in advance, he fails to attend more than three consecutive meetings of the committee (r 3.1(e));
- 588 (6) if he is convicted of a relevant criminal offence (r 3.1(f));
- 589 (7) if he is adjudged bankrupt or makes a composition or arrangement with his creditors (r 3.1(g));
- 590 (8) if he lacks mental capacity (r 3.1(h));
- 591 (9) if, being a licensed conveyancer member:
20. (a) he ceases to hold a licence (r 3.1(i)(i));
20
21. (b) an order or direction is made against him by the Council's Discipline and Appeals Committee pursuant to s 26 of the Administration of Justice Act 1985 (see PARA 1378) (other than an order which provides only for the payment of costs by him) or a direction is made by that committee pursuant to the Courts and Legal Services Act 1990 Sch 8 para 17(2) (see PARA 1383) (r 3.1(i)(ii));
21
22. (c) his licence is suspended pursuant to the Administration of Justice Act 1985 s 24 (see PARA 1359) (r 3.1(i)(iii)); or
22

23. (d) the Council's powers of intervention are exercised against him or his practice in accordance with the Administration of Justice Act 1985 Sch 5 Pt 1 (see PARA 1384) (r 3.1(i)(iv));
23

592 (10) if as a member of another profession, an adverse determination has been made against him by a disciplinary tribunal or committee established to regulate the activities and/or the conduct of members of his profession (other than an order which provides only for the payment of costs by him) (r 3.1(j));

593 (11) if he is or becomes an employee, self-employed officer or general consultant of any organisation having as its main object the protection or promotion of the interests of licensed conveyancers or the defence of its members (r 3.1(k));

594 (12) if he has failed to disclose to the Council any relevant matter which would have rendered him ineligible for selection to the committee referred to in r 7.1(c)-(i) (see note 13) (r 3.1(l));

595 (13) if he is removed from office under r 10.3 (see note 10) (r 3.1(m)).

15 'Secretary to the committee' means an employee of the Council appointed by the Council to act as secretary to the committee: Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 1.3.2.

16 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 3.2.

17 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 3.3.

18 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 4.1. Such attendance fees to be determined by the Council and to be reviewed periodically: r 4.1.

19 Council for Licensed Conveyancers' Investigating Committee Rules 2004 r 5.1. The standing orders are those made for the committee by the Council pursuant to the Administration of Justice Act 1985 Sch 3 para 9(2) (see PARA 1322): r 5.1.

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1361. Determination of allegations by the Investigating Committee.

As from a day to be appointed the following provisions have effect¹. Where, on hearing an allegation², the Investigating Committee³ is satisfied that a licensed conveyancer⁴ has failed to comply with any condition to which his licence was subject, or has failed to comply with any rules made by the Council for Licensed Conveyancers⁵ the committee may, if it thinks fit, make an order directing the payment by the licensed conveyancer of a penalty to be forfeited to Her Majesty⁶, the amount of which may not exceed such amount as may be prescribed by rules made by the Council⁷. A person against whom such an order is made may appeal to the Discipline and Appeals Committee⁸, and on any such appeal the Discipline and Appeals Committee may make such order as it thinks fit⁹. The committee may make such order as it considers fit as to the payment of costs¹⁰ by:

- 2054 (1) the Council¹¹;
- 2055 (2) the licensed conveyancer against whom the proceedings were brought¹²; or
- 2056 (3) if the person on whose allegation the proceedings were brought was heard (in person, or through a representative) by the committee in the course of the proceedings, that person¹³.

The person against whom such an order is made may appeal to the Discipline and Appeals Committee, and on any such appeal the Discipline and Appeals Committee may make such order as it thinks fit¹⁴.

Where an order is made by the Discipline and Appeals Committee on appeal¹⁵, a party to the appeal, or the Council (if it is not a party to the appeal) may appeal against the order to the High Court¹⁶, which may make such order as it thinks fit¹⁷. The decision of the High Court on such an appeal is final¹⁸.

1 As from a day to be appointed the Administration of Justice Act 1985 s 24A is added by the Legal Services Act 2007 s 182, Sch 17, Pt 1, paras 1, 13. At the date at which this volume states the law no such day had been appointed.

2 Ie an allegation made by virtue of the Administration of Justice Act 1985 s 24(1A)(a) (see PARA 1359): s 24A(1). See note 1. Schedule 4 paras 1, 2(1), (3), 4 (see PARAS 1365, 1375, 1378) have effect in relation to proceedings for the hearing and determination of an allegation by the committee, as they have effect in relation to proceedings before the Discipline and Appeals Committee under s 26 (see PARA 1378): s 24A(5)(a).

3 As to the Investigating Committee see PARA 1359.

4 For these purposes the licensed conveyancer must be holding a licence under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1362 et seq): s 24A(1). See note 1. As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

5 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

6 Administration of Justice Act 1985 s 24A(1). See note 1. Schedule 4 paras 1, 2(1), (3), 4 (see PARAS 1365, 1375, 1378) have effect in relation to orders of the Investigating Committee, as they have effect in relation to orders of the Discipline and Appeals Committee: s 24A(5)(b).

7 Administration of Justice Act 1985 s 24A(4). See note 1.

8 As to the Discipline and Appeals Committee see PARA 1362 et seq.

9 Administration of Justice Act 1985 s 24A(6). See note 1.

10 le in relation to proceedings before the committee by virtue of the Administration of Justice Act 1985 s 24(1A)(a) (see PARA 1359): s 24A(2). See note 1.

11 Administration of Justice Act 1985 s 24A(2)(a). See note 1. For these purposes and the purposes of head (2) (see text and note 12) costs includes costs incurred in connection with a preliminary investigation of the allegation under section 24(1A) (see PARA 1359): s 24A(3).

12 Administration of Justice Act 1985 s 24A(2)(b). See note 1. As to the meaning of 'costs' for these purposes see note 11.

13 Administration of Justice Act 1985 s 24A(2)(c). See note 1.

14 Administration of Justice Act 1985 s 24A(7). See note 1.

15 le under the Administration of Justice Act 1985 s 24A(6) or (7) (see text and notes 9, 14): s 24A(8). See note 1.

16 Administration of Justice Act 1985 s 24A(8). See note 1.

17 Administration of Justice Act 1985 s 24A(9). See note 1.

18 Administration of Justice Act 1985 s 24A(10). See note 1.

UPDATE

1361 Determination of allegations by the Investigating Committee

TEXT AND NOTE 1--Day appointed is 31 March 2009: SI 2009/503.

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(ii) The Discipline and Appeals Committee

A. IN GENERAL

1362. The Discipline and Appeals Committee.

The Council for Licensed Conveyancers¹ must establish a committee, to be known as the Discipline and Appeals Committee, for the hearing and determination of (1) cases referred² to it by the Investigating Committee³; and (2) certain applications and appeals⁴.

The Council must make rules⁵ as to the constitution and meetings of the committee, the quorum and the mode of summoning the members of the committee⁶.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Ie under the Administration of Justice Act 1985 s 24: see PARA 1359.

3 Administration of Justice Act 1985 s 25(1)(a). As to the Investigating Committee see PARA 1359.

4 Administration of Justice Act 1985 s 25(1)(b). The applications and appeals referred to are those made or brought under ss 27-29 (see PARAS 1379-1381): s 25(1)(b). As from a day to be appointed s 25(1)(b) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 14 to include applications or appeals brought under the Administration of Justice Act 1985 s 24A (see PARA 1361). At the date at which this volume states the law no such day had been appointed. As to the procedure at any hearing held by the committee see PARA 1365 et seq.

5 Rules so made (1) must secure that a person who acted in relation to any case as a member of the Investigating Committee does not act in relation to the case as a member of the Discipline and Appeals Committee (Administration of Justice Act 1985 s 25(3)(a)); and (2) may provide for the appointment to the Discipline and Appeals Committee of persons, whether licensed conveyancers or not, who are not members of the Council (s 25(3)(b)). As to the making of rules generally see PARA 1326 note 2. As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

6 Administration of Justice Act 1985 s 25(2). See the Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 (5 May 2004), which came into force on 19 July 2004; and PARA 1363 et seq. As to the use of inclusive language in rules and regulations made by the Council see PARA 1320 note 9.

UPDATE

1362-1364 The Discipline and Appeals Committee ... Composition and hearings of the Discipline and Appeals Committee

Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 replaced by Licensed Conveyancers' Discipline and Appeals Committee Rules 2009.

1362 The Discipline and Appeals Committee

NOTE 4--Day appointed is 31 March 2009: SI 2009/503.

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1363. Membership of the Discipline and Appeals Committee.

The Discipline and Appeals Committee must consist of a chairman and two deputy chairmen, each of whom must be a barrister or a solicitor, of not less than seven years' standing, and a members' panel of at least six other members¹. Of the members of the members' panel, at least one half must be licensed conveyancers² at the time of their appointment and none may be a member of the Council for Licensed Conveyancers or have so been during the 18 months preceding their appointment³. The posts of chairman, deputy chairmen and members of the members' panel must be advertised in at least one national newspaper and in at least one other publication and appointments must be made only from respondents to such advertisements⁴. The appointment of chairman, deputy chairmen and members of the members' panel must be made by a selection panel⁵. The persons so appointed must serve for three years from the date of their respective appointments⁶, and any person so appointed is eligible for re-appointment⁷.

A vacancy in the office of chairman or deputy chairman or a member of the members' panel automatically occurs under prescribed circumstances⁸, and a member of the committee may be removed from office following a special meeting convened for the purpose⁹. Where a vacancy occurs, it must be filled as soon as possible¹⁰. Each deputy chairman must be designated by the chairman as first deputy chairman or second deputy chairman, so that if there is a vacancy in the office of chairman or if the chairman is unable or unwilling to act, the first deputy chairman may act in his place, and if there is a vacancy in the office of both chairman and first deputy chairman or if both are unable or unwilling to act within a reasonable time the second deputy chairman may act in their place¹¹. Where any member of the members' panel who has been appointed to hear a matter dies or is unable or unwilling to act the chairman may appoint another member of the Discipline and Appeals Committee to act in his place¹².

The Council must pay to the chairman, deputy chairmen, members of the members' panel and members of the selection panel attendance fees and reasonable expenses, such attendance fees to be determined by the Council and reviewed periodically¹³.

1 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.10. The chairman may, by giving not less than 14 nor more than 28 days' notice to the other members of the committee, determine the time, date and place of a meeting for any purpose connected with the committee's affairs other than a hearing: r 6.1. The chairman must, if requested in writing by not less than three members, convene such a meeting and if he fails within 14 days to give notice the requisitionists may give notice to convene the meeting: r 6.2. Any notice to convene a meeting must state the matters proposed to be discussed at the meeting: r 6.3. At any meeting held under this rule any three members of the committee present constitute a quorum, and a simple majority of those present and voting suffices to pass any resolution: r 6.4. In case of equality of votes on a resolution requiring a simple majority the chairman has a second or casting vote: r 6.4. As to hearing before the committee see PARA 1364.

2 'Licensed conveyancer' means any person holding a licence in force granted by the Council and includes, in relation to any complaint or allegation against him, any person who was a licensed conveyancer at the time when his conduct, which is to be considered by the Investigating Committee or the Discipline and Appeals Committee, occurred: Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 1.2.2. As to the Investigating Committee see PARA 1359 et seq.

3 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.2.

4 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.3.

5 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.4. The selection panel must comprise five persons (at least two of whom must be licensed conveyancers) chosen by the Council, from the following: (1) the current and past chairmen or deputy chairmen of the discipline and appeals committee; (2) licensed conveyancers; and (3) members of the Council who are not licensed conveyancers: r 2.5. The chairman of the selection panel must be a present or past chairman or deputy chairman of the discipline and appeals committee and has the casting vote in the event that the other members are unable by a majority to agree an appointment: r 2.6.

6 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.7.

7 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.8.

8 See Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.9. The prescribed circumstances are: (a) on his death; (b) on the acceptance by the Council of his written resignation; (c) on the expiration of his term of office; (d) on his becoming a member of the Council; (e) if he has been convicted of a criminal offence involving fraud, dishonesty, deception or violence or an indictable offence (the rules refer to a 'serious arrestable offence' as defined by the Police and Criminal Evidence Act 1984 s 116, which provision is repealed by the Serious Organised Crime and Police Act 2005 Sch 7. As to indictable offences see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARA 1102 et seq); (f) if he is adjudged bankrupt or makes a composition or arrangement with his creditors; (g) if the provisions of the Mental Capacity Act 2005 relating to the management of the property and affairs of patients apply (the rules refer to the Mental Health Act 1983 Pt VII which is repealed and replaced by the Mental Capacity Act 2005: see **MENTAL HEALTH**); (h) if professional misconduct is proved against him by the disciplinary process of his professional body; or (i) if he is or becomes an employee of any organisation having as its main object the protection or promotion of the interests of licensed conveyancers or the defence of its members: Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.9.

9 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.10, 7.1. A special meeting may be convened in like manner with the provisions of rr 6.1, 6.2 and 6.3 (see note 1) for the purpose of the proposed removal of a member of the committee under r 2.10: r 7.1. At any meeting held under this rule any six members of the committee present, disregarding the member whose removal is proposed, constitute a quorum: r 7.2. The member of committee whose removal is proposed may attend in person with a nominated representative at any meeting held under this rule in order to state his case, and, once he has done so, he and his nominated representative must withdraw from the meeting while the committee deliberate: r 7.3. To pass a resolution for the removal of a member the resolution must be by way of secret ballot and requires affirmative votes of at least six members of the committee: r 7.4. The person whose removal is proposed may not vote: r 7.4.

10 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.11.

11 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.12.

12 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.13.

13 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 2.14.

UPDATE

1362-1364 The Discipline and Appeals Committee ... Composition and hearings of the Discipline and Appeals Committee

Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 replaced by Licensed Conveyancers' Discipline and Appeals Committee Rules 2009.

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B. HEARINGS

1364. Composition and hearings of the Discipline and Appeals Committee.

Hearings before the Discipline and Appeals Committee¹ are convened at the direction of the chairman² to determine proceedings under the procedure rules³. When the chairman directs that a hearing is to be convened he must select the two members of the panel⁴ who, together with the chairman, are to constitute the committee, provided that at least one member must be a licensed conveyancer⁵. The chairman must determine the date, time and place for the hearing and notify the Council for Licensed Conveyancers⁶, who must as soon as reasonably possible send notice of the hearing to each member of the members' panel who has been selected by the chairman, the legal assessor⁷ and the appropriate parties in the prescribed manner⁸. When the committee at a hearing directs that a new hearing date be fixed for the purposes of a preliminary meeting or to hear or continue to hear and determine the matter before them, the chairman must determine the date, time and place for the hearing and notify the Council⁹, who must again send notice appropriately¹⁰.

Without prejudice to any restriction that would apply under the general law, a person who acted in relation to any case, as a member of the Investigating Committee¹¹ or otherwise as a member of the Council, must not act in relation to that case as a member of the committee¹².

1 As to the committee see PARA 1362.

2 ie the chairman of the committee: see PARA 1363.

3 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 3.1. 'Procedure rules' means the Licensed Conveyancers Discipline and Appeals Committee (Procedure) Rules 2001: r 1.2.2. As to the statutory instrument containing those rules see PARA 1365 note 12. To enable the chairman to decide whether a hearing must be convened, the Council must: (1) comply with the Licensed Conveyancers Discipline and Appeals Committee (Procedure) Rules 2001 r 3(1) and r 3(2) (see PARA 1383 note 13); or (2) if r 3(1) and r 3(2) are not applicable, inform the chairman of the following other circumstances: (a) the service of an application or appeal to the committee as soon as is practicable after receipt by the Council of that application or appeal; (b) a requirement by a complainant as defined by the Courts and Legal Services Act 1990 Sch 8 para 17(1) (see PARA 1383) that a hearing should be convened to hear and determine the complaint: Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 3.2. For transitional provision see r 3.7.

4 ie the members' panel: see PARA 1363.

5 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 3.3. No hearing may take place or continue unless these selected members are present: see r 5.1. As to the meaning of 'licensed conveyancer' see PARA 1363 note 2.

6 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 3.3.

7 'Legal assessor' means the assessor to the committee appointed by the Council in accordance with the Administration of Justice Act 1985 Sch 4 para 3 (see PARA 1376): Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 1.2.2.

8 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 3.4. The prescribed manner is that prescribed by the Licensed Conveyancers Discipline and Appeals Committee (Procedure) Rules 2001.

9 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 3.5.

- 10 See the Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 3.6.
- 11 As to the Investigating Committee see PARA 1359 et seq.
- 12 Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 r 4.1

UPDATE

1362-1364 The Discipline and Appeals Committee ... Composition and hearings of the Discipline and Appeals Committee

Council for Licensed Conveyancers' Discipline and Appeals Committee Rules 2004 replaced by Licensed Conveyancers' Discipline and Appeals Committee Rules 2009.

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1365. Rules of procedure in disciplinary proceedings.

The Council for Licensed Conveyancers¹ must make rules² about the procedure and practice to be followed in relation to proceedings³ before the Discipline and Appeals Committee⁴.

With regard to disciplinary proceedings before the committee⁵, such rules must in particular make provision for:

- 2057 (1) securing that, where proceedings are to be brought against any person, notice that the proceedings are to be brought must be given to that person at such time and in such manner as may be specified in the rules⁶;
- 2058 (2) securing that any party⁷ to the proceedings is, if he so requires, entitled to be heard by the committee⁸;
- 2059 (3) enabling any party to the proceedings to be represented by counsel or solicitor, or, if the rules so provide and the party so elects, by a person of such other description as may be specified in the rules⁹;
- 2060 (4) requiring proceedings before the committee to be held in public so far as may be provided by the rules¹⁰.

Any such rules may not come into force until approved¹¹ by order of the Secretary of State¹².

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the making of rules generally see PARA 1326 note 2.

3 I.e. proceedings under the Administration of Justice Act 1985 Pt II (ss 11-39): see PARAS 1319 et seq, 1378 et seq.

4 Administration of Justice Act 1985 s 30, Sch 4 para 1(1). As to the Discipline and Appeals Committee see PARA 1362.

5 I.e. proceedings under the Administration of Justice Act 1985 s 26: see PARA 1378.

6 Administration of Justice Act 1985 Sch 4 para 1(2)(a).

7 For these purposes, 'party' in relation to any proceedings means (1) the person against whom the proceedings are brought; (2) a person on whose complaint the proceedings are brought; or (3) a person appointed by the Council to represent the Council at the proceedings: Administration of Justice Act 1985 Sch 4 para 1(5).

8 Administration of Justice Act 1985 Sch 4 para 1(2)(b).

9 Administration of Justice Act 1985 Sch 4 para 1(2)(c).

10 Administration of Justice Act 1985 Sch 4 para 1(2)(d).

11 The Secretary of State may approve rules made under the Administration of Justice Act 1985 Sch 4 para 1 either as submitted to him or subject to such modifications as he thinks fit; but where he proposes to approve any such rules subject to modifications he must notify the modifications to the Council and consider any observations of the Council on them: Sch 4 para 1(4) (amended by SI 2003/1887; and prospectively repealed (see note 12)).

12 Administration of Justice Act 1985 Sch 4 para 1(3) (amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 6(c)). Any such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Sch 4 para 1(3). In exercise of the power so conferred, the Lord Chancellor has made the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules Approval Order 2001, SI 2001/2797, which came into force on 30 September 2001. See further PARA 1367 et seq. As from a day to be appointed the Administration of Justice Act 1985 Sch 4 para 1(3), (4) is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 30(1), (2), Sch 23. At the date at which this volume states the law no such day had been appointed.

UPDATE

1365 Rules of procedure in disciplinary proceedings

NOTE 12--Repeals in force 31 March 2009: SI 2009/503.

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1366. Relaxation of rules.

At the request of any applicant, appellant or respondent¹ (but, in a case where the respondent is the Council for Licensed Conveyancers², only with the consent of the applicant or appellant), the Discipline and Appeals Committee³ may direct that any requirement of the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001⁴ is not to apply or is relaxed in any manner it thinks fit; and such a direction may be given subject to such other requirements as it thinks fit⁵.

Where it has given such a direction, it may give a further direction that the requirement is again to apply or, as the case may be, to apply without the relaxation or with others⁶.

- 1 As to the meaning of 'respondent' see PARA 1367 note 8.
- 2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.
- 3 As to the Discipline and Appeals Committee see PARA 1362.
- 4 See PARA 1367 et seq; and as to the statutory instrument containing those rules see PARA 1365 note 12.
- 5 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 37(1).
- 6 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 37(2).

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1367. Notice of hearing.

As soon as reasonably possible after the making of a reference, complaint, application or appeal¹ to the Discipline and Appeals Committee², the Council for Licensed Conveyancers³ must serve on the other parties⁴ and the legal assessor⁵ a notice in writing, stating the date, time and place at which the committee will hold a hearing into the matter and which includes a statement as to the parties' rights as regards representation⁶.

In the case of a reference or complaint⁷, the notice also must contain details of the matters alleged against the respondent⁸ in the form of an allegation or complaint dealing with each matter separately and specifying the provision under which each reference or complaint is made, and setting out each allegation or complaint and a summary of the facts relied on to support it⁹.

A hearing must not be held earlier than 28 days after the notice of hearing is served, unless the parties agree or provision is made otherwise¹⁰.

The Council must also serve on the other parties and the legal assessor a notice in writing of a postponed, adjourned, or preliminary hearing, stating the date, time and place of the hearing, unless, in the case of an adjourned hearing, all parties and the legal assessor are present at the hearing which is adjourned and agree upon the date, time and place of the postponed hearing¹¹.

1 le a reference or complaint under the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3 (see PARA 1359 note 11), a reference under r 4 (see PARA 1380 note 3), an application under r 5 (see PARAS 1379 note 3; 1380 note 6; and 1404 note 7) or an appeal under r 6 (see PARAS 1381 note 6; and 1405 note 6): r 8(1)(a)-(d).

2 As to the Discipline and Appeals Committee see PARA 1362.

3 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

4 'Party' has the meaning at para 1(5) of Sch 4 to the Administration of Justice Act 1985 Sch 4 para 1(5) (see PARA 1365 note 7): Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 2(1). References to parties are also to be taken in appropriate cases to include the persons representing them: r 16(1).

5 'The legal assessor' means a person appointed under the Administration of Justice Act 1985 Sch 4 para 3 (see PARA 1376): Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 2(1).

6 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 8(1). As to the parties' rights as regards representation and non-appearance see r 16; and PARA 1371. The Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 are contained in the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules Approval Order 2001, SI 2001/2797, Schedule; they are to be cited as the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 and came into force on 30 September 2001: r 1.

7 le a reference or complaint under the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3 (see PARA 1359 note 11), or a reference under r 4 (see PARA 1380 note 3): r 8(2).

8 'Respondent' means:

- 596 (1) in the case of an allegation or complaint referred to the committee under the Administration of Justice Act 1985 s 24 (see PARA 1359), or Sch 6 para 3 (see PARA 1402), or a complaint made under the Courts and Legal Services Act 1990 Sch 8 para 17 (see PARA 1383);
24. (a) the licensed conveyancer or recognised body about whom the allegation is made or the complaint is made or treated as made, and
24
25. (b) in any case where the recognition of a recognised body may be revoked under the Administration of Justice Act 1985 Sch 6 para 5 (see PARA 1403) and the chairman or committee so direct, includes the recognised body in question;
25
- 597 (2) in the case of an appeal under the Administration of Justice Act 1985 s 29, or Sch 6 para 8 (see PARA 1405), the Council;
- 598 (3) in the case of an application under the Administration of Justice Act 1985 s 27, 28(2) or Sch 6 para 7(2) (see PARA 1404), the Council;
- 599 (4) in the case of a reference under the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 4, the person or recognised body whose licence or recognition may be revoked: r 2(1). 'Recognised body' means a body for the time being recognised under the Administration of Justice Act 1985 s 32, and in relation to a particular allegation or complaint, includes a body corporate which was so recognised at the time when the conduct to which the allegation or complaint relates took place: r 2(1).
- 9 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 8(2). At least 21 days before the date of a hearing of an allegation or complaint within r 8(2) the Council may by notice in writing require the respondent to give an indication to the Council within 14 days of the receipt of the notice as to which of the allegations or complaints or of the facts set out in it are in dispute, although a respondent is not bound at the hearing by any indication given by him to the Council under this rule: r 12. The Council may amend an allegation, complaint or the summary of facts served under r 8 by serving an amended notice, but the consent of the committee is required for an amendment less than 21 days before the date of the hearing: see r 14(1). Where an amendment is made the committee may, on application by the respondent, postpone the hearing: r 14(2). As to postponement see further PARA 1368.
- 10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 8(3).
- 11 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 8(4).

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1368. Postponement of hearing.

The chairman¹ or the Discipline and Appeals Committee may postpone a hearing at any stage of the proceedings if any party² applies for a postponement or it appears appropriate³. The postponement may be on such terms as the chairman or, as the case may be, the committee thinks fit⁴. The Council for Licensed Conveyancers⁵ must notify all parties and the legal assessor⁶ of such a postponement as soon as possible and must agree a time and date for the postponed hearing⁷.

1 The chairman or acting chairman of the Discipline and Appeals Committee: see the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 2(1); and PARA 1363.

2 As to the meaning of 'party' see PARA 1367 note 4.

3 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 9(1).

4 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 9(2).

5 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

6 As to the meaning of 'legal assessor' see PARA 1367 note 5.

7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 9(3). The time and date for the postponed hearing must be agreed under r 8(4): see PARA 1367.

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1369. Preliminary hearing.

The Discipline and Appeals Committee may hold a preliminary hearing:

- 2061 (1) in the case of a hearing of an allegation or complaint by the Investigating Committee¹ or a reference by the Council for Licensed Conveyancers² for the revocation of a licence obtained through fraud or error³, in order to ask the respondent whether he admits or denies the allegation or complaint against him⁴; and
- 2062 (2) in any case to determine issues relating to giving evidence, and to give directions as to the conduct of the proceedings⁵;

or the chairman⁶ may give such directions without a preliminary hearing⁷.

1 Ie under the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3 (see PARA 1359 note 11); r 10(a). As to the Investigating Committee see PARA 1359 et seq.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 Ie under the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 4 (see PARA 1380 note 3); r 10(a).

4 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 10(a).

5 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 10(b).

6 As to the meaning of 'chairman' see PARA 1368 note 1.

7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 10.

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1370. Documents.

At least 21 days before the date of a hearing (other than the hearing of an appeal), each party¹ must:

- 2063 (1) supply a collection of copies of all the documents on which that party proposes to rely (other than any affidavit), with all pages numbered, to every other party²; and
- 2064 (2) inform every other party in writing of the address where those documents may be inspected if the appropriate notice is given³.

If a party who proposes to rely on an affidavit is requested in writing by any other party to supply that party with a copy of any document referred to in the affidavit, but not exhibited to it, he must, not later than seven days after receiving the request, supply that party with a copy of it and a notice in writing of the address where the document may be inspected⁴.

Any party may, by notice in writing served not later than 14 days before the day of the hearing, call upon any other party to admit the authenticity of any document⁵. If such a notice is served, the other party is deemed to have admitted the document's authenticity, unless⁶:

- 2065 (a) by a notice in writing served on the first party not later than seven days before the day of the hearing the other party requires its authenticity to be proved at the hearing⁷; or
- 2066 (b) the Discipline and Appeals Committee determines that it should be so proved⁸.

Unless the chairman or the committee directs that service may be effected by another method specified in the direction, service of documents may be effected only⁹:

- 2067 (i) by delivering the document personally¹⁰;
- 2068 (ii) in the case of service on a licensed conveyancer¹¹, by sending it by first class ordinary post addressed to him at his address registered with the Council or one of his places of business or his last known address¹²;
- 2069 (iii) in the case of service on a recognised body¹³ or body corporate, by sending it by first class ordinary post addressed to it at its registered or principal office or its last known address¹⁴;
- 2070 (iv) in the case of service on any other person by first class post to his last known address¹⁵;
- 2071 (v) through a document exchange¹⁶; or
- 2072 (vi) by sending it by first class ordinary post to a solicitor who has indicated that he has been instructed to accept service on behalf of the person to be served¹⁷.

Any document to be served on the Council must be served at the principal place of business of the Council¹⁸. Service by post or through a document exchange is deemed to have been effected on the second business day after the document is dispatched¹⁹.

- 1 As to the meaning of 'party' see PARA 1367 note 4. As to hearings see PARA 1364 et seq; as to appeals see PARA 1381 et seq.
- 2 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 11(1)(a).
- 3 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 11(1)(b). Each party may during normal office hours inspect the documents of which copies have been supplied, if he gives the party who supplied them three days' notice of his wish to do so: r 11(3).
- 4 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 11(2). As to inspection of documents see note 3.
- 5 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 13(1).
- 6 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 13(2).
- 7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 13(2)(a).
- 8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 13(2)(b). As to the Discipline and Appeals Committee see PARA 1362.
- 9 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(1).
- 10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(1)(a).
- 11 'Licensed conveyancer' means a person who holds a licence in force under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARA 1319 et seq), and in relation to a particular allegation or complaint, includes a person who held such a licence at the time when the conduct to which the allegation or complaint relates took place: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 2(1).
- 12 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(1)(b).
- 13 As to the meaning of 'recognised body' see PARA 1367 note 8.
- 14 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(1)(c).
- 15 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(1)(d).
- 16 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(1)(e). The document exchange must be in accordance with CPR r 6.2: see **CIVIL PROCEDURE** vol 11 (2009) PARA 139.
- 17 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(1)(f).
- 18 See the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(2).
- 19 See the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 33(3).

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1371. Procedure at hearings in general.

Any hearing before the Discipline and Appeals Committee must be held in public¹. However, if it appears to the committee to be appropriate in the interests of any child or for the protection of the private life of any party or in the interests of justice, it may direct that the public are to be excluded from the whole or part of the proceedings². Additionally, the committee may at any time and for any purpose during or after a hearing deliberate in private, with or without the legal assessor³.

The committee may adjourn the hearing of any proceedings from time to time as it thinks fit⁴.

Any party⁵ may appear at a hearing before the committee in person, by counsel or a solicitor, by an officer or member of any professional organisation of which he is a member, by a licensed conveyancer, or if the party is a recognised body or body corporate, by one of its officers or employees⁶.

If a party fails to appear the committee may proceed to hear and determine the matter in the absence of that party⁷, and if the party who has not appeared is the appellant or applicant, the committee may determine the matter on the evidence before them and may dismiss the appeal or application without hearing any further evidence⁸.

Any party to the proceedings is entitled to a copy of any matters recorded concerning the proceedings and kept by the Council for Licensed Conveyancers⁹, on payment of the cost of recording them and supplying the copy¹⁰.

Any question put to the vote must be formulated and put to the committee members present by the chairman¹¹, who must call on the committee members present to vote for or against the question and then declare the result¹².

If an equal number of votes is cast for and against the question, the question is deemed to have been determined:

2073 (1) in the case of a hearing of an allegation or complaint or reference¹³ in favour of the respondent¹⁴;

2074 (2) in the case of an application¹⁵, in favour of the applicant¹⁶;

2075 (3) in the case of an appeal¹⁷, in favour of the Council¹⁸; and

2076 (4) in the case of the question whether a hearing is to be postponed, in favour of postponement¹⁹.

Anything authorised or required to be done by the chairman may, if he is absent or unable to act or continue to act, be done by any other member of the committee who is authorised for the purpose by the chairman or, if no person is authorised, by the other members present²⁰.

1 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 15(1). As to the Discipline and Appeals Committee see PARA 1362.

2 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 15(2).

3 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 15(3). As to the meaning of 'legal assessor' see PARA 1367 note 5.

- 4 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 15(4).
- 5 As to the meaning of 'party' see PARA 1367 note 4.
- 6 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 16(1).
- 7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 16(2)(a).
- 8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 16(2)(b).
- 9 As to the Council for Licensed Conveyancers see PARA 1320 et seq.
- 10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 21.
- 11 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 35(1). The chairman is entitled to vote: r 35(3).
- 12 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 35(2).
- 13 Is an allegation or complaint within the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3 (see PARA 1359 note 11), or a reference under r 4 (see PARA 1380 note 3): r 35(4)(a).
- 14 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 35(4)(a).
- 15 Is an application within the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 5 (see PARAS 1379 note 3, 1380 note 6, and 1404 note 7): r 35(4)(b).
- 16 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 35(4)(b).
- 17 As to appeals see PARA 1381 et seq.
- 18 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 35(4)(c).
- 19 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 35(4)(d). As to postponement see PARA 1368.
- 20 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 36. This provision has effect subject to the Administration of Justice Act 1985 Sch 4 para 4: see PARA 1378.

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1372. Procedure in the case of references and complaints.

Each allegation or complaint¹ must be read out by the solicitor² in the presence of the parties³ and the legal assessor⁴ appearing at the hearing⁵. If the respondent⁶ has appeared at the hearing, as soon as the allegations or complaints have been read, the chairman must ask him if he wishes to object to any allegation or complaint, or any part of any allegation or complaint, on a point of law⁷. If the respondent so wishes, he may make his objection and any other party may reply to it⁸. If the objection is upheld and no amendment of the allegation or complaint is allowed by the Discipline and Appeals Committee⁹, it must dismiss it¹⁰. If only part of the allegation or complaint is disallowed, no further proceedings may be taken on that part of it¹¹.

The chairman must ask the respondent to respond to each allegation or complaint against him, and his response must be recorded¹². Any qualified or equivocal response by the respondent must be recorded as a denial of the allegation or complaint¹³. Where the respondent unequivocally admits an allegation or complaint the chairman must announce that the allegation or complaint has been admitted and is therefore treated as proved, and follow the procedure specified for such a case¹⁴. Where the respondent denies or is deemed to deny any allegation or complaint, a different procedure is specified¹⁵.

At the conclusion of the hearing the committee must determine which allegations or complaints have been proved to its satisfaction¹⁶. If the committee determines that any allegation or complaint has not been proved to its satisfaction, it must dismiss that allegation or complaint¹⁷. If the committee determines that any allegation or complaint has been proved to its satisfaction:

- 2077 (1) the chairman must invite the solicitor to address the committee and adduce evidence as to the respondent's previous character and history¹⁸;
- 2078 (2) the chairman must then invite the respondent to address the committee by way of mitigation and the respondent may adduce evidence in support¹⁹; and
- 2079 (3) the committee must next decide whether to determine the case immediately or to postpone its determination²⁰.

If some allegations or complaints are admitted but others are denied, the procedure with regard to the admitted allegations²¹ must be postponed until the determination of the denied allegations or complaints²². The procedure relating to mitigation in respect of admitted allegations or complaints must be dealt with in conjunction with mitigation in respect of any disputed allegations or complaints which the committee determines have been proved²³.

A single hearing may be held into allegations or complaints against two or more respondents²⁴. The procedural rules²⁵ apply to such a hearing as they do to a hearing involving one respondent, but with the necessary adaptations and subject to any directions given by the committee as to the order in which proceedings are to be taken in relation to each of the respondents²⁶. In such a hearing the rights of a respondent²⁷ are to be exercised separately by each of the respondents who wishes to exercise them²⁸.

1 The hearings by the committee in the case of a reference or complaint within the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3 (see PARA 1359 note 11), or a reference under r 4 (see PARA 1380 note 3): rr 22(1), 30(1). Where a hearing relates to two or more allegations or complaints, or two

or more licences or the recognition of two or more bodies, the committee may deal with them separately or together as the chairman thinks fit: rr 22(2), 30(3). In the case of a reference under r 4 the committee may modify the procedure to be adopted in the case of any particular reference in such manner as it thinks fit, having regard to the particular circumstances of the case: r 30(2).

2 'Solicitor', in relation to any function under the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001, means a solicitor authorised by the Council to act on its behalf for the purposes of that function and, in relation to a hearing, includes counsel instructed to act on the Council's behalf: r 2(1).

3 As to the meaning of 'party' see PARA 1367 note 4.

4 As to the meaning of 'legal assessor' see PARA 1367 note 5.

5 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 23(1).

6 As to the meaning of 'respondent' see PARA 1367 note 8.

7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 23(2).

8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 23(3).

9 As to the Discipline and Appeals Committee see PARA 1362.

10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 23(4).

11 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 23(5).

12 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 24(1). If the respondent fails to attend the hearing but the committee decides to proceed in his absence, he is deemed to have denied each allegation or complaint against him, and that must be recorded: r 24(2).

13 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 24(3).

14 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 24(4). The specified procedure is that the solicitor must first: (1) summarise the facts supporting the allegation or complaint; (2) specify the circumstances leading up to the conduct or, as the case may be, the conviction in question; and (3) adduce evidence of the previous history and character of the respondent: r 25(1). The chairman must then invite the respondent to make representations to the committee as to any mitigating circumstances and adduce evidence about the mitigating circumstances, if he wishes to do so: r 25(2). The committee must next determine (a) whether there is sufficient evidence or information to conclude the case; and (b) whether to determine the case immediately or to postpone its determination: r 25(3).

15 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 24(5). In such a case the solicitor must first set out the case against the respondent and then adduce evidence of the allegations or complaint: r 26(1). If the complainant is not called as a witness, he may be heard by the committee if he wishes: r 26(2). If no evidence about an allegation or complaint is given, the committee must determine that it is not satisfied as to it and dismiss it: r 26(3). If the respondent attends the hearing:

600 (1) he may cross-examine any witness and, if the committee has heard the complainant, the complainant;

601 (2) after the solicitor has set out the case against him, the respondent may make one or both of the following submissions about any allegation or complaint in respect of which evidence has been adduced against him: (a) that sufficient evidence has not been adduced on which the committee could find that the facts alleged in the allegation or complaint have been proved; (b) that the facts proved do not support the allegation or complaint: r 26(4).

If the respondent makes such a submission:

602 (i) the solicitor may reply to it;

603 (ii) after hearing the solicitor, the committee must determine whether the submission should be upheld;

604 (iii) if it determines to uphold it, it must dismiss the allegation or complaint; and

605 (iv) if it determines not to uphold it, the proceedings on the application must continue as follows: r 26(5).

The respondent may adduce evidence rebutting any allegation or complaint, and may address the committee (but only once, unless the committee gives leave for a further address), and, if he chooses to adduce evidence, may choose whether to address the committee before beginning to adduce it or after its conclusion: r 26(6). Any witness who gives evidence for the respondent may be cross-examined by the solicitor, and the chairman may permit the respondent to examine the witness further: r 26(7). After that, if the committee permits him to do so, the solicitor may adduce evidence to rebut any evidence adduced by the respondent; and, if he does so, the respondent may make a further address limited to the solicitor's evidence: r 26(8). If evidence, which does not relate to the respondent's character, is given by a person other than the respondent, the solicitor may address the committee by way of reply to the respondent's case; and the committee may permit him to do so when no such evidence has been adduced: r 26(9). If the respondent makes a submission to the committee on a point of law, the solicitor has a right of reply limited to the submission (but without prejudice to his rights to address the committee by way of reply to the respondent's case): r 26(10).

- 16 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 27(1).
- 17 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 27(2).
- 18 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 27(3)(a).
- 19 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 27(3)(b).
- 20 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 23(3)(c).
- 21 Ie the procedure set out in the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 25: see note 14.
- 22 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 28(1).
- 23 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 28(2).
- 24 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 29(1).
- 25 Ie the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001: see PARA 1363 et seq.
- 26 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 29(2).
- 27 Ie the rights set out under the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001.
- 28 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 29(3).

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1373. Procedure in the case of applications.

Where an application is made for the removal of disqualification from holding a licence¹, for a licence after a previous licence has been revoked on the ground of fraud², or for grant of recognition after a previous recognition has been revoked on the ground of fraud³, the Discipline and Appeals Committee⁴ must hold a hearing to determine the application⁵. Such a hearing must be opened by the Council for Licensed Conveyancers⁶ providing the committee with a summary of its previous findings and order⁷. Then the applicant may adduce evidence in support of the application, and then the Council may cross-examine the applicant and any witness called on his behalf⁸. At the conclusion of the case for the applicant the Council may adduce evidence in response and the applicant may then cross-examine any witness called on behalf of the Council⁹.

At any stage of the hearing, the chairman or, with his leave, any other member of the committee or the legal assessor¹⁰ may examine any party¹¹ or witness¹². At the conclusion of the evidence the applicant may address the committee, and then the Council may address the committee, but no further submissions are permitted, unless the chairman allows them¹³.

1 le an application under the Administration of Justice Act 1985 s 27(1): see PARA 1379.

2 le an application under the Administration of Justice Act 1985 s 28(2): see PARA 1380.

3 le an under the Administration of Justice Act 1985 Sch 6 para 7(2): see PARA 1404.

4 As to the Discipline and Appeals Committee see PARA 1362.

5 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 31(1). The provisions of rr 8-21 (see PARA 1367 et seq) have effect in the case of an application within r 31(1), subject to such modifications as the chairman or the committee considers appropriate in the case of such an application: r 31(8).

6 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 31(2), (3).

8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 31(4).

9 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 31(5).

10 As to the meaning of 'legal assessor' see PARA 1367 note 5.

11 As to the meaning of 'party' see PARA 1367 note 4.

12 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 31(6).

13 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 31(7).

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1374. Procedure on postponement of determination.

Where the Discipline and Appeals Committee¹ postpones making its determination in any case², at the resumed hearing the chairman must invite the solicitor³ to summarise for the information of the committee the proceedings and determinations which have already taken place⁴, and the committee may then hear further evidence⁵ in relation to the conduct and character of the licensed conveyancer⁶ or recognised body⁷ in question⁸.

The licensed conveyancer or recognised body may be heard by the committee and may adduce evidence in respect of the further evidence⁹. If the committee again postpone its determination, the foregoing provisions apply with such modifications as it thinks fit¹⁰.

At any resumed hearing, if a new allegation or complaint has been made against a respondent it must be dealt with first in accordance with the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001¹¹ and any determination which has already been postponed must be further postponed and dealt with simultaneously with the determination or postponed determination about the new allegation or complaint¹².

1 As to the Discipline and Appeals Committee see PARA 1362.

2 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(1).

3 As to the meaning of 'solicitor' see PARA 1372 note 2.

4 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(2)(a).

5 That further evidence may include evidence of material facts, matters and events which may have arisen since the last hearing; and of any criminal conviction: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(3). As to hearing evidence see PARA 1375.

6 As to the meaning of 'licensed conveyancer' see PARA 1370 note 11.

7 As to the meaning of 'recognised body' see PARA 1367 note 8.

8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(2)(b).

9 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(4).

10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(5).

11 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(6)(a).

12 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 34(6)(b). In such a case the resumed hearing may take place on the same day as the hearing of the new allegation or complaint, notwithstanding r 8(3) (see PARA 1367): r 34(7).

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1375. Evidence etc.

For the purposes of any disciplinary proceedings¹ before the Discipline and Appeals Committee², the committee may administer oaths, and any party³ to the proceedings may sue out writs of subpoena ad testificandum and of subpoena duces tecum, but no person may be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action⁴.

Evidence may, in general, be given in person or by affidavit⁵. However, the evidence of a witness may not be given by affidavit, if the committee so directs⁶, or if notice is served by a party⁷ at least 14 days before the date of the hearing on the person proposing to adduce the evidence that he requires the witness to attend the hearing to give evidence in person⁸. The evidence of a witness may only be given by affidavit if a copy of it has been served on all other parties at least 14 days before the date of the hearing, and sent to the committee and the legal assessor at least seven days before that date⁹, or if all the parties agree¹⁰. If a party proposes to call a witness who has not deposed to an affidavit, the party must, at least 14 days before the date of the hearing, notify all other parties of his proposal to do so¹¹, serve on them a copy of a written statement by the witness¹², and produce the original signed statement at the hearing¹³.

The committee may direct a party to call any person as a witness¹⁴, and may examine any party or witness at any stage of a hearing¹⁵.

In any proceedings before the committee a fact is to be regarded as proved if the committee considers that it has been proved on the balance of probabilities¹⁶, and the committee may consider any evidence which would be admissible in civil proceedings in England or Wales¹⁷. However, in proceedings where a criminal act or any fraud or dishonesty is alleged the allegation is only to be regarded as proved if the committee considers that it has been proved beyond reasonable doubt¹⁸, and the committee may only consider evidence which would be admissible in criminal proceedings in England or Wales¹⁹; or which it is satisfied, after consulting with the legal assessor, it is desirable in the interests of justice to consider²⁰. The foregoing provisions do not apply to an allegation with regard to an offence which renders a licensed conveyancer unfit to practise²¹.

1 In any proceedings under the Administration of Justice Act 1985 s 26: see PARA 1378.

2 As to the Discipline and Appeals Committee see PARA 1362.

3 As to the meaning of 'party' for these purposes see PARA 1365 note 7.

4 Administration of Justice Act 1985 s 30, Sch 4 para 2(1), (3). The Supreme Court Act 1981 s 36 (subpoena issued by High Court to run throughout the United Kingdom: see **CIVIL PROCEDURE** vol 11 (2009) PARA 1008) applies in relation to any such proceedings before the committee as it applies in relation to causes or matters in the High Court: Administration of Justice Act 1985 Sch 4 para 2(2). As from a day to be appointed Sch 4 para 2(2) is amended by the Constitutional Reform Act 2005 s 59(5), Sch 11 Pt 1 para 1(2) to replace the reference to the Supreme Court Act 1981 with a reference to the Senior Courts Act 1981. At the date at which this volume states the law no such day had been appointed.

5 See the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(1).

6 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(2)(a).

- 7 As to the meaning of 'party' see PARA 1367 note 4.
- 8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(2)(b). In such a case the affidavit may nevertheless be treated as a written statement of the witness who is called to give evidence: r 17(2)(c). As to the treatment of such a statement see text and notes 11-13.
- 9 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(3)(a).
- 10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(3)(b).
- 11 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(4)(a).
- 12 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(4)(b). Such a statement must have been dated and signed by the witness on each page: r 17(4)(b).
- 13 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(4)(c). Such a written statement by a witness who has not deposed to an affidavit may be treated as the witness's evidence in chief, unless the committee determines otherwise: r 17(5).
- 14 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(6).
- 15 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 17(7). With the consent of the party of witness, any member of the committee or the legal assessor may also examine a party or witness: r 17(7). As to the meaning of 'legal assessor' see PARA 1367 note 5.
- 16 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 18(1)(a).
- 17 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 18(1)(b). As to the admission of evidence in civil proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 749 et seq.
- 18 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 18(2)(a).
- 19 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 18(2)(b)(i). As to the admission of evidence in criminal proceedings see **CIVIL PROCEDURE** vol 11 (2009) PARA 758.
- 20 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 18(2)(b)(ii).
- 21 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 18(2)(3). The offence referred to is one to which r 19 applies: see PARA 1377.

UPDATE

1375 Evidence etc

NOTE 4--Appointed day is 1 October 2009: SI 2009/1604.

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1376. Legal assessor.

Until a day to be appointed, for the purpose of advising the committee on questions of law arising in disciplinary proceedings¹, there must in all such proceedings be an assessor to the Discipline and Appeals Committee², appointed by the Council for Licensed Conveyancers³.

The Secretary of State may by statutory instrument make rules as to the functions of assessors so appointed; and such rules may contain such provisions as appear to the Secretary of State expedient for securing⁴:

- 2080 (1) that where an assessor advises the committee on any question of law as to evidence, procedure or any other matters specified in the rules, he must do so in the presence of every party to the proceedings, or every person representing such a party, who appears at the proceedings or, if the advice is tendered after the committee has begun to deliberate as to its findings, that every such party or person must be informed what advice the assessor has tendered⁵;
- 2081 (2) that every such party or person must be informed if in any case the committee does not accept the advice of the assessor on any such question⁶,

and such incidental and supplementary provisions as appear expedient to the Secretary of State⁷.

An assessor may be appointed either generally or for any particular proceedings or class of proceedings, and holds and vacates office in accordance with the terms of the instrument under which he is appointed⁸. The Council may pay to persons appointed to act as assessors such remuneration as the Council may determine⁹.

It is the duty of the legal assessor (a) to be present at all disciplinary proceedings and advise the committee on any questions of law and the admission of evidence arising from the proceedings which the committee may refer to him¹⁰; and (b) to inform the committee forthwith of any irregularity in the conduct of proceedings before it which may come to his knowledge and to advise the committee of his own motion when it appears to him that, but for such advice, there is a possibility of a mistake of law being made¹¹.

If on any occasion the committee does not accept the advice of the legal assessor, a record must be made of the question referred to him, of the advice given and of the refusal to accept it, together with the reasons for such a refusal, and a copy of the record must be given to every party, or person representing a party, to the proceedings who appears at them¹². Copies of written advice made for these purposes must also be available on application to every party to the proceedings who does not appear at them¹³.

¹ ie any proceedings under the Administration of Justice Act 1985 s 26: see PARA 1378.

² As to the Discipline and Appeals Committee see PARA 1362.

³ Administration of Justice Act 1985 Sch 4 para 3(1). The assessor must be a person who has a ten year general qualification within the meaning of the Courts and Legal Services Act 1990 s 71 (see PARA 742): Administration of Justice Act 1985 Sch 4 para 3(1) (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 64).

As from a day to be appointed the Administration of Justice Act 1985 Sch 4 para 3 is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 30(1), (3), Sch 23. At the date at which this volume states the law no such day had been appointed.

4 Administration of Justice Act 1985 Sch 4 para 3(2) (amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 6(c); and as prospectively repealed: see note 3). As to the making of rules generally see PARA 1326 note 2.

5 Administration of Justice Act 1985 Sch 4 para 3(2)(a) (as prospectively repealed: see note 11); Licensed Conveyancers' Discipline and Appeals Committee (Legal Assessor) Rules 1987, SI 1987/788, r 4. The Administration of Justice Act 1985 Sch 4 para 1(5) (as to the meaning of 'party' see PARA 1365 note 7) applies for these purposes: Sch 4 para 3(5) (as prospectively repealed: see note 3).

6 Administration of Justice Act 1985 Sch 4 para 3(2)(b) (as prospectively repealed: see note 3).

7 Administration of Justice Act 1985 Sch 4 para 3(2) (as amended: see note 4; as prospectively repealed: see note 3). In exercise of the power so conferred, the Lord Chancellor has made the Licensed Conveyancers' Discipline and Appeals Committee (Legal Assessor) Rules 1987, SI 1987/788, which came into force on 26 May 1987: r 1.

8 Administration of Justice Act 1985 Sch 4 para 3(3) (as prospectively repealed: see note 3).

9 Administration of Justice Act 1985 Sch 4 para 3(4) (as prospectively repealed: see note 3).

10 Licensed Conveyancers' Discipline and Appeals Committee (Legal Assessor) Rules 1987, SI 1987/788, rr 2, 3(a).

11 Licensed Conveyancers' Discipline and Appeals Committee (Legal Assessor) Rules 1987, SI 1987/788, r 3(b).

12 Licensed Conveyancers' Discipline and Appeals Committee (Legal Assessor) Rules 1987, SI 1987/788, r 5.

13 Licensed Conveyancers' Discipline and Appeals Committee (Legal Assessor) Rules 1987, SI 1987/788, r 6.

UPDATE

1376 Legal assessor

TEXT AND NOTES 1-9--Day appointed in relation to these provisions is 31 March 2009: SI 2009/503. See Guidance issued by the Council for Licensed Conveyancers for the appointment, service and duties of Legal Advisers to the Discipline and Appeals Committee.

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1377. Proof of conviction.

If it is alleged that a respondent¹ has been convicted of an offence which renders him unfit to practise as a licensed conveyancer² and the respondent denies the allegation or is deemed to have done so, then the conviction must be proved by the Council for Licensed Conveyancers³ by the production of a certificate of conviction or the affidavit of a person who attended the trial⁴.

If the respondent denies a conviction, he may adduce evidence on the question whether he was convicted as alleged, and may address the committee about that question⁵. Only one such address may be made by a respondent and, where the respondent adduces evidence, the address may be made either before that evidence is begun or after it is concluded⁶.

The Council is entitled to reply to any submission made by the respondent and may call evidence in rebuttal⁷. If the Council does call such evidence, the respondent may make a further address limited to the rebutting evidence⁸.

At the conclusion of submissions and the calling of evidence, the committee must determine whether or not the conviction has been proved to its satisfaction⁹. If it is not so satisfied, it must dismiss the allegation or complaint relating to the conviction¹⁰. If it is so satisfied, the conviction is to be admitted in evidence against the respondent¹¹.

1 As to the meaning of 'respondent' see PARA 1367 note 8.

2 The such offence as is mentioned in the Administration of Justice Act 1985 s 24(1)(a)(i) (see PARA 1359); or Sch 6 para 3(1)(a)(i) (see PARA 1402): Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(1). As to the meaning of 'licensed conveyancer' see PARA 1370 note 11.

3 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

4 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(1).

5 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(2).

6 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(3).

7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(4).

8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(5).

9 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(6).

10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(7).

11 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 19(8).

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1378. Orders which may be made in proceedings in disciplinary cases.

Where, on the hearing of any allegation, the Discipline and Appeals Committee (the committee)¹ is satisfied that a licensed conveyancer²:

- 2082 (1) has been convicted³ of an offence which renders him unfit to practise as a licensed conveyancer⁴;
- 2083 (2) has, while holding a current licence⁵, failed to comply with any condition to which that licence was subject⁶; or
- 2084 (3) has failed to comply with any rules made⁷ by the Council for Licensed Conveyancers⁸,

the committee may, if it thinks fit, make one or more of the following orders⁹. An order:

- 2085 (a) revoking any licence held by the licensed conveyancer;
- 2086 (b) directing that the licensed conveyancer be disqualified from holding a licence (either permanently or during a specified period);
- 2087 (c) suspending any licence held by the licensed conveyancer;
- 2088 (d) that any licence has effect subject to such conditions as may be specified in the order;
- 2089 (e) directing the payment by the licensed conveyancer of a penalty not exceeding £3,000¹⁰, to be forfeited to Her Majesty;
- 2090 (f) that the licensed conveyancer be reprimanded by the Council; and
- 2091 (g) requiring the licensed conveyancer to pay the costs incurred in bringing the proceedings against him before the committee or a contribution towards those costs of such amount as the committee considers reasonable¹¹.

As from a day to be appointed the committee may make such order as it considers fit as to the payment of costs by the Council, the licensed conveyancer against whom the proceedings were brought, and, if the person on whose allegation the proceedings were brought was heard (in person, or through a representative) by the committee in the course of the proceedings, that person¹². At the date at which this volume states the law no such day had been appointed.

Where the Discipline and Appeals Committee is considering, or has considered, an application or complaint with respect to a licensed conveyancer, and is of the opinion the Council should consider whether to take any of the specified steps¹³ with respect to that licensed conveyancer, it must inform the Council¹⁴.

1 As to the Discipline and Appeals Committee see PARA 1362.

2 Administration of Justice Act 1985 s 26(1). As from a day to be appointed s 26(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1, paras 1, 15(1), (2) so that any allegation means an allegation referred to the committee under s 24(1A)(b) (see PARA 1359). At the date at which this volume states the law no such day had been appointed.

For these purposes, references to a licensed conveyancer include, in relation to an allegation or complaint which has been referred to the Discipline and Appeals Committee in pursuance of the Administration of Justice

Act 1985 s 24(3) (see PARA 1359), references to any such person as is mentioned in s 24(3): s 26(4). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

3 le as mentioned in the Administration of Justice Act 1985 s 24(1)(a)(i): see PARA 1359.

4 Administration of Justice Act 1985 s 26(1)(a). As to the meaning of 'practising as a licensed conveyancer' see PARA 1319 note 3.

5 le a licence in force under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1379 et seq): s 26(1)(b). As to the meaning of 'licence' see PARA 1319 note 3.

6 Administration of Justice Act 1985 s 26(1)(b). As to conditional licences see PARAS 1330-1331.

7 le under the Administration of Justice Act 1985 Pt II: s 26(1)(c). As to the making of rules generally see PARA 1326 note 2.

8 Administration of Justice Act 1985 s 26(1)(c). As to the Council for Licensed Conveyancers see PARA 1320 et seq.

9 Administration of Justice Act 1985 s 26(1). A person against whom an order is made by the committee under s 26(1) may appeal to the High Court, and on any such appeal the High Court may make such order as it thinks fit: s 26(7). The decision of the High Court on an appeal under s 26(7) is final: s 26(8). For guidelines on the approach to be taken by the committee see *Holwell v Council for Licensed Conveyancers* (1988) Times, 8 July, DC (where a licensed conveyancer's contention that the standards required of licensed conveyancers were lower than those expected of solicitors was rejected). The proper test to be applied by the court is whether the committee is shown by the record to have been plainly wrong; where that has not been established, the appeal will be dismissed: *Holwell v Council for Licensed Conveyancers*.

Every order of the committee must be filed with the Council, together with a statement of the committee's findings signed by the chairman or by some other member of the committee authorised by him for the purpose: Administration of Justice Act 1985 s 30, Sch 4 para 4(1). Any such file may be inspected during office hours without payment: Sch 4 para 4(2). An order which has been filed is treated for enforcement purposes as if it had been made by the High Court: Sch 4 para 4(3).

10 If it appears to the Lord Chancellor that there has been a change in the value of money since the relevant date, he may by order substitute for the sum specified as the penalty such other sum as appears to him to be justified by the change: Administration of Justice Act 1985 s 26(5). Any such order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 26(5). 'Relevant date' means (1) in relation to the first order under s 26(5), 11 May 1987; (2) in relation to each subsequent order, the last occasion when the specified sum was altered: s 26(6); Administration of Justice Act 1985 (Commencement No 4) Order 1987, SI 1987/787. At the date at which this volume states the law, no such order had been made.

As from a day to be appointed s 26(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 15(1), (3)(a) to replace the specified sum with a Council power to specify the amount by rules; s 26(5), (6) are correspondingly repealed by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 15(1), (5). At the date at which this volume states the law no such day had been appointed.

11 Administration of Justice Act 1985 s 26(2). As from a day to be appointed s 26(2)(f), (g) (heads (f), (g) in the text) are respectively substituted and repealed by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 15(1), (3)(b), (c) and replaced by the power to make an order reprimanding a licensed conveyancer. At the date at which this volume states the law no such day had been appointed.

12 Administration of Justice Act 1985 s 26(2A) (s 26(2A), (2B) (7A) prospectively added, (8) prospectively amended by the Legal Services Act 2007 Sch 17 Pt 1 paras 1, 15(1), (4), (6), (7)). Where such an order is made against the Council or the licensed conveyancer against whom proceedings were brought, the reference to costs includes costs incurred in connection with a preliminary investigation of the allegation under s 24(1A) (see PARA 1359): s 26(2B) (as so prospectively added). Where the committee makes such an order, the person against whom it is made may appeal to the High Court, and on any such appeal the High Court may make such order as it thinks fit: s 24(7A) (as so prospectively added). The decision of the High Court is final: s 24(8) (as so prospectively amended).

13 le any of the steps specified in the Courts and Legal Services Act 1990 s 53(7), Sch 8 para 15: see PARA 1383.

14 Courts and Legal Services Act 1990 Sch 8 para 20. As from a day to be appointed Sch 8 para 20 is repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 83, 100(e), Sch 23. At the date at which this volume states the law no such day had been appointed.

UPDATE

**1378-1379 Orders which may be made in proceedings in disciplinary cases,
Removal of disqualification from holding a licence**

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

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1379. Removal of disqualification from holding a licence.

Where the Discipline and Appeals Committee¹ has made an order disqualifying a person from holding a licence to practise as a licensed conveyancer², that person must not be issued with a licence while his disqualification continues in force, unless the committee directs otherwise following an application made to it in that behalf³. Such an application may not be made to the committee within ten months of (1) the date of the committee's order; or (2) a previous such application by that person⁴. As from a day to be appointed, in relation to proceedings on such an application the committee may make such order as it considers fit as to the payment of costs by the Council or the applicant⁵. At the date at which this volume states the law no such day had been appointed.

Where the committee has made any order directing that a licensed conveyancer is to be disqualified, either permanently or during a specified period, from holding an advocacy licence⁶, a litigation licence⁷ or a probate licence⁸, he may not, while his disqualification continues in force, be issued with a licence of a kind to which the disqualification relates unless the committee directs otherwise on an application made to it in that behalf⁹. Such an application may not be made to the committee (a) within ten months of the date of the committee's order relating to the kind of licence in question; or (b) within ten months of a previous such application by the licensed conveyancer concerned with respect to that kind of licence¹⁰. As from a day to be appointed, in relation to proceedings on such an application the committee may make such order as it considers fit as to the payment of costs by the Council or the applicant¹¹. At the date at which this volume states the law no such day had been appointed.

1 As to the Discipline and Appeals Committee see PARA 1362.

2 I.e. an order under the Administration of Justice Act 1985 s 26(2)(b); see PARA 1378. As to the meaning of 'licence' and 'licensed conveyancer', and as to the meaning of 'practising as a licensed conveyancer', see PARA 1319 note 3.

3 Administration of Justice Act 1985 s 27(1). Such an application must be made in writing, sent to the Council's principal place of business, specify the statutory provision under which it is made, and set out any facts which support the application: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 5. An applicant may amend the facts set out in his application by serving an amended notice under r 8 (see PARA 1367), but the consent of the committee is required for an amendment less than 21 days before the date of the hearing: see r 14(1). Where an amendment is made the committee may, on application by the respondent, postpone the hearing: 14(2). As to the procedure with regard to hearings before that committee see PARA 1365 et seq. As to the statutory instrument containing those rules see PARA 1365 note 12.

4 Administration of Justice Act 1985 s 27(2).

5 Administration of Justice Act 1985 s 27(3) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 16).

6 As to the meaning of 'advocacy licence' see PARA 1332 note 16.

7 As to the meaning of 'litigation licence' see PARA 1332 note 17.

8 As to the meaning of 'probate licence' see PARA 1332 note 18.

9 Courts and Legal Services Act 1990 s 53(7), Sch 8 para 9(1).

10 Courts and Legal Services Act 1990 Sch 8 para 9(2).

11 Courts and Legal Services Act 1990 Sch 8 para 9(3) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 33, 35(1), (7)).

UPDATE

1378-1379 Orders which may be made in proceedings in disciplinary cases, Removal of disqualification from holding a licence

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(ii) The Discipline and Appeals Committee/B. HEARINGS/1380. Revocation of licence on grounds of fraud or error.

1380. Revocation of licence on grounds of fraud or error.

Where the Discipline and Appeals Committee¹ is satisfied that a licence² was issued to a person as a result of any error, or as a result of fraud on the part of that person, the committee may, if it thinks fit, revoke the licence by order³. The committee may also revoke any other relevant licence⁴ issued to that person⁵.

A person may be issued with a licence notwithstanding that a licence previously held by him has been revoked under these provisions; but if it was revoked on the ground of fraud he may not be issued with a licence except on an application made in that behalf to the committee⁶. On any such application, the committee may, if it thinks fit, direct that the applicant be disqualified from holding a licence until the expiration of such period as may be specified in the direction⁷.

1 As to the Discipline and Appeals Committee see PARA 1362.

2 As to the meaning of 'licence' see PARA 1319 note 3.

3 Administration of Justice Act 1985 s 28(1). Where it is considered that a licence was issued to any person as a result of error or of fraud on his part, and the Council for Licensed Conveyancers decides that there is any question of the committee exercising its powers under s 28(1) the Council must refer the matter to the committee: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 4(1). Such a reference under this rule must be made in writing, state that it is made under this r 4, and set out the allegation and a summary of the facts relied on to support it: r 4(3). A copy of such a reference must be served on the respondent, together with a copy of the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001: r 4(4). On such a reference, the committee must hold a hearing to determine the allegation: r 4(5). As to the statutory instrument containing those rules see PARA 1365 note 12. As to the Council for Licensed Conveyancers see PARA 1320 et seq. As to the procedure which then pertains see PARA 1365 et seq. As to the meaning of 'respondent' see PARA 1367 note 8.

As from a day to be appointed, in relation to proceedings for the revocation of a licence the committee may make such order as it considers fit with regard to the payment of costs by the Council for Licensed Conveyancers or the licensed conveyancer to whose licence the proceedings relate: s 28(5) (s 28(5), (6) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 17). At the date at which this volume states the law no such day had been appointed. As to the Council for Licensed Conveyancers see PARA 1320 et seq.

4 'Relevant licence' means a licence under the Administration of Justice Act 1985 Pt II (ss 11-39) (see PARAS 1319 et seq, 1381 et seq) or an advocacy, litigation or probate licence: Courts and Legal Services Act 1990 Sch 8 para 1. As to the meaning of 'advocacy licence', 'litigation licence' and 'probate licence' see PARA 1332 notes 16-18.

5 Courts and Legal Services Act 1990 s 53(7), Sch 8 para 10(1). As from a day to be appointed, in relation to proceedings for the revocation of a licence the committee may make such order as it considers fit with regard to the payment of costs by the Council for Licensed Conveyancers or the licensed conveyancer to whose licence the proceedings relate: Sch 8 para 10(5) (para 10(5), (6) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 2 paras 33, 35(1), (8)). At the date at which this volume states the law no such day had been appointed.

6 Administration of Justice Act 1985 s 28(2). Such an application must be made in writing, sent to the Council's principal place of business, specify the statutory provision under which it is made, and set out any facts which support the application: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 5. An applicant may amend the facts set out in his application by serving an amended notice under r 8 (see PARA 1367), but the consent of the committee is required for an amendment less than 21 days before the date of the hearing: see r 14(1). Where an amendment is made the committee may, on application by the respondent, postpone the hearing: 14(2). As to the procedure with regard to hearings before the Discipline and Appeals Committee see PARA 1364 et seq. The Courts and Legal Services Act 1990 provides that

no relevant licence may be issued to a person who has had a relevant licence revoked except on the advice of the committee given to the Council for Licensed Conveyancers as the result of an application made by that person to the committee: see Sch 8 para 10(2).

As from a day to be appointed, in relation to proceedings on an application under the Administration of Justice Act 1985 s 28(2), or the Courts and Legal Services Act 1990 Sch 8 para 10(2) the committee may make such order as it considers fit with regard to the payment of costs by the Council or the applicant: Administration of Justice Act 1985 s 28(6) (as prospectively added: see note 3); Courts and Legal Services Act 1990 Sch 8 para 10(6) (as prospectively added: see note 5).

7 Administration of Justice Act 1985 s 28(3). Section 27 (see PARA 1379) applies in relation to a direction under s 28(3) as it applies in relation to any such order as is referred to in s 26(2)(b) (see PARA 1378): s 28(4).

The Courts and Legal Services Act 1990 provides that on an application under Sch 8 para 10 the committee may, if it thinks fit, direct that the applicant be disqualified from holding any relevant licence, or a relevant licence of a specified kind, until the expiry of such period as may be specified in the direction: see Sch 8 para 10(3). Schedule 8 para 9 (see PARA 1379) applies in relation to such a direction as it applies in relation to any direction of a kind mentioned in Sch 8 para 9(1): Sch 8 para 10(4).

UPDATE

1380 Revocation of licence on grounds of fraud or error

NOTES 3, 5, 6--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(ii) The Discipline and Appeals Committee/C. APPEALS/1381. Appeals from decisions in relation to licences.

C. APPEALS

1381. Appeals from decisions in relation to licences.

Where, in the case of any person, the Council for Licensed Conveyancers¹ (1) refuses an application for a licence² made by that person; (2) decides to issue that person with a licence subject to conditions³; or (3) decides to give a direction⁴ in relation to that person imposing conditions on his licence while it is in force, that person may appeal to the Discipline and Appeals Committee⁵ against that refusal or decision within one month of being notified of it⁶.

On such an appeal being made, the committee may:

- 2092 (a) in the case of an appeal under head (1) or head (2) above, direct the Council by order to issue the appellant with a licence either free from conditions or subject to such conditions as may be specified by the committee in the direction⁷;
- 2093 (b) in the case of an appeal under head (3) above, by order revoke the direction of the Council or direct that the appellant's licence has effect subject to such conditions as may be specified by the committee in the direction⁸;
- 2094 (c) in any case, except an appeal in respect of a deemed refusal⁹ to issue a licence, affirm the refusal or decision of the Council appealed against¹⁰;
- 2095 (d) in the case of an appeal in respect of a deemed refusal, by order direct the Council not to issue a licence to the appellant¹¹.

On such an appeal, the committee may make such order as to the payment of costs by the Council or by the appellant as it thinks fit¹².

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'licence' see PARA 1319 note 3.

3 I.e. conditions under the Administration of Justice Act 1985 s 16: see PARA 1330.

4 I.e. a direction under the Administration of Justice Act 1985 s 17: see PARA 1331.

5 As to the Discipline and Appeals Committee see PARA 1362.

6 Administration of Justice Act 1985 s 29(1). Such an appeal to the committee must be made in writing and sent to the Council's principal place of business, and specify the statutory provision under which it is made, the refusal or decision appealed against and its date, and the grounds of appeal: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 6. An appellant may amend the grounds of his appeal or add further grounds by serving an amended notice under r 8 (see PARA 1367), but the consent of the committee is required for an amendment less than 21 days before the date of the hearing: see r 14(1). Where an amendment is made the committee may, on application by the respondent, postpone the hearing: r 14(2). As to the procedure with regard to hearings of the Discipline and Appeals Committee see PARA 1364 et seq. As to the statutory instrument containing those rules see PARA 1365 note 12.

As from a day to be appointed s 29(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 18 to allow a person to appeal against the refusal of a application made by that person under s 17A (see PARA 1331). At the date at which this volume states the law no such day had been appointed.

7 Administration of Justice Act 1985 s 29(2)(a).

8 Administration of Justice Act 1985 s 29(2)(b). As from a day to be appointed s 29(2)(ba) is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 18 to enable the committee by order to direct the Council to grant an application under s 29(1)(d) (as prospectively added: see note 6). At the date at which this volume states the law no such day had been appointed.

9 le under the Administration of Justice Act 1985 s 15(3): see PARA 1329.

10 Administration of Justice Act 1985 s 29(2)(c).

11 Administration of Justice Act 1985 s 29(2)(d).

12 Administration of Justice Act 1985 s 29(3).

UPDATE

1381 Appeals from decisions in relation to licences

NOTES 6, 8--Day appointed is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(ii) The Discipline and Appeals Committee/C. APPEALS/1382. Procedure in the case of appeals.

1382. Procedure in the case of appeals.

An appeal¹ to the Discipline and Appeals Committee² is not by way of a full rehearing and must be conducted in accordance with the following procedure³.

The evidence which may be considered is limited to documents showing or recording the evidence which was before the Council at the time of the refusal or decision which is the subject of the appeal and relates to the grounds of the appeal, and fresh evidence may only be considered if⁴:

- 2096 (1) the committee is satisfied that it could not previously have been obtained with reasonable diligence, and if it had been before the Council for Licensed Conveyancers it would have had an important influence upon the determination of the matter⁵; or
- 2097 (2) it relates to conduct which occurred after the date of the refusal or decision which is the subject of the appeal⁶.

The committee may hold a preliminary hearing for determining issues relating to the production of fresh evidence and the conduct of the appeal, and may give directions about the conduct of the appeal at such a preliminary hearing, or the chairman may do so without a hearing⁷. Unless a collection of all the documents relevant to determination of the matter which is the subject of the appeal with an index at the front and all pages numbered has been prepared by the appellant or, at his request and expense, by the Council, and served in duplicate on the Council at least 21 days before the date of the hearing of the appeal, the committee may dismiss the appeal⁸. If any party to the appeal wishes to raise a point of law, he must serve a notice, summarising the point and his argument about it, on every other party and the legal assessor⁹ at least 14 days before the date it is heard¹⁰. The chairman may examine any party or witness at any stage of the hearing and with the chairman's consent any member of the committee or the legal assessor may do so¹¹.

1 le an appeal under the Administration of Justice Act 1985 s 29 (see PARA 1381), or Sch 6 para 8 (see PARA 1405).

2 As to the Discipline and Appeals Committee see PARA 1362.

3 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(1).

4 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(2).

5 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(2)(a).

6 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(2)(b).

7 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(3).

8 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(4).

9 As to the meaning of 'legal assessor' see PARA 1367 note 5.

10 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(5).

- 11 Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 32(6).

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(iii) Inadequate Professional Services

1383. Steps which may be taken in respect of inadequate professional services.

Until a day to be appointed the following provisions have effect¹. Where it appears to the Council for Licensed Conveyancers² that the professional services provided by a licensed conveyancer³ in connection with any matter in which he or his firm has been instructed by a client⁴ were in any respect not of the quality that could reasonably have been expected of him as a licensed conveyancer, the Council may, if it thinks fit take any of the following steps⁵:

- 2098 (1) determining that the costs to which the licensed conveyancer is entitled in respect of his services are to be limited to such amount as may be specified in the determination and directing him to comply, or to secure compliance, with such one or more of the permitted requirements⁶ as appear to the Council to be necessary in order to give effect to its determination⁷;
- 2099 (2) directing him to secure the rectification, at his expense or at that of his firm, of any such error, omission or other deficiency arising in connection with the matter in question as the Council may specify⁸;
- 2100 (3) directing him to pay such compensation to the client, not exceeding £5,000⁹, as the Council sees fit to specify¹⁰;
- 2101 (4) directing him to take such other action in the interests of the client, at his expense or at that of his firm, as the Council may specify¹¹.

The Council may not take any of these steps unless it is satisfied that in all the circumstances of the case it is appropriate to do so¹².

If a licensed conveyancer fails to comply with a direction given under these provisions, any person may make a complaint in respect of that failure to the Discipline and Appeals Committee¹³, but no other proceedings whatever may be brought in respect of it¹⁴.

The Council may, by regulations made with the concurrence of the Secretary of State, make provision for the payment of a prescribed¹⁵ fee by any client with respect to whom the Council is asked to consider whether to take any of the steps in heads (1) to (4) above¹⁶. Where a client pays the prescribed fee it must be repaid to him if the Council takes any of the steps in the matter with respect to which the fee was paid¹⁷.

1 As from a day to be appointed the Courts and Legal Services Act 1990 s 53(7), Sch 8 paras 14-20 are repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 83, 100(e), Sch 23. At the date at which this volume states the law no such day had been appointed. For transitional provisions see the Legal Services Act 2007 Sch 22 para 8.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. The Council's powers under the Courts and Legal Services Act 1990 Sch 8 para 14 (see the text and note 4) are exercisable in relation to a person who was a licensed conveyancer at the material time, even though he no longer is a licensed conveyancer and references to a licensed conveyancer for these purposes and for the purposes of Sch 8 paras 15-20 (see the text and notes 5-16), so far as they relate to the exercise of those powers, are to be construed accordingly: Sch 8 para 14(4) (as prospectively repealed: see note 1).

4 As to the meaning of 'client' for these purposes see PARA 1353 note 5 (definition contained in the Administration of Justice Act 1985 s 39(1)).

5 Courts and Legal Services Act 1990 Sch 8 para 14(1) (as prospectively repealed: see note 1). The Council's power to take any such steps is not confined to cases where the client may have a cause of action against the licensed conveyancer for negligence: Sch 8 para 15(3) (as prospectively repealed: see note 1). This power has been delegated by the Council to the Investigating Committee: see the Council For Licensed Conveyancers' Investigating Committee Rules 2004 r 6. As to the Investigating Committee see PARA 1359 et seq.

The power is also exercisable, with modifications, in relation to a recognised body: see the Administration of Justice Act 1985 s 32(7), Sch 6 para 4(3A); and PARA 1403. As to the meaning of 'recognised body' see PARA 1392 note 14.

6 The permitted requirements are (1) that the whole or part of any amount already paid by or on behalf of the client in respect of the costs be refunded; (2) that the whole or part of those costs be remitted; (3) that the right to recover those costs be waived, whether wholly or to any specified extent: Courts and Legal Services Act 1990 Sch 8 para 15(2) (as prospectively repealed: see note 1). 'Costs' means the costs to which the licensed conveyancer is entitled in respect of his services: Sch 8 para 15(1)(a) (as so prospectively repealed).

7 Courts and Legal Services Act 1990 Sch 8 para 15(1)(a) (as prospectively repealed: see note 1). As to the delegation of this power to the Investigating Committee see note 4.

8 Courts and Legal Services Act 1990 Sch 8 para 15(1)(b) (as so prospectively repealed). As to the delegation of this power to the Investigating Committee see note 4.

9 See the Courts and Legal Services Act 1990 Sch 8 para 16(1) (amended by the Licensed Conveyancers (Compensation for Inadequate Professional Services) Order 2000, SI 2000/643, art 2; and as prospectively repealed: see note 1). The Secretary of State may by order made by statutory instrument (subject to annulment in pursuance of a resolution of either House of Parliament) amend Sch 8 para 16(1) by substituting such other sum as he considers appropriate: Sch 8 para 16(2), (4) (Sch 8 para 16(2) amended by SI 2003/1887; and as so prospectively repealed). Before making any such order the Secretary of State must consult the Council: Sch 8 para 16(3) (para 16(3) amended by the Secretary of State for Constitutional Affairs Order 2003, SI 2003/1887, art 9, Sch 2 para 8(1)(d); and as so prospectively repealed). As to the delegation of this power to the Investigating Committee see note 4.

10 Courts and Legal Services Act 1990 Sch 8 para 15(1)(c) (as prospectively repealed: see note 1). See also *R v Council for Licensed Conveyancers, ex p Watson* (2000) Times, 16 July. As to the delegation of this power to the Investigating Committee see note 4.

11 Courts and Legal Services Act 1990 Sch 8 para 15(1)(d) (as prospectively repealed: see note 1). As to the delegation of this power to the Investigating Committee see note 15.

12 Courts and Legal Services Act 1990 Sch 8 para 14(2) (as prospectively repealed: see note 1). In determining in any case whether it is appropriate to take any of the steps, the Council may have regard to (1) the existence of any remedy which it is reasonable to expect to be available to the client in civil proceedings; and (2) whether it is reasonable to expect him to begin such proceedings where proceedings seeking any such remedy have not been begun by him: Sch 8 para 14(3) (as so prospectively repealed). As to the delegation of this power to the Investigating Committee see note 4.

13 As to the Discipline and Appeals Committee see PARA 1362.

14 Courts and Legal Services Act 1990 Sch 8 para 17(1) (as prospectively repealed: see note 1). A reference in the form of a complaint by the Council to the Discipline and Appeals Committee under Sch 8 para 17(1) must be made in writing, specify the statutory provision under which it is made, and set out the allegation or complaint and a summary of the facts relied on to support it: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3(1). A copy of such a complaint must be served on the respondent, together with a copy of the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001, and a copy lodged with the chairman of the committee, within 14 days of the making of the reference or the decision to make the complaint: r 3(2). A complainant other than the Council wishing to refer a complaint to the committee must comply with the provisions above, save as to the reference to time, and in addition must at the same time serve a copy of the complaint on the Council: r 3(3). As to the statutory instrument containing those rules see PARA 1365 note 12. As to the Council for Licensed Conveyancers see PARA 1320. As to the procedure which then pertains see PARA 1367 et seq. As to the meaning of 'respondent' see PARA 1367 note 8.

On the hearing of such a complaint the committee may, if it thinks fit, and whether or not it makes any order under the Administration of Justice Act 1985 s 26(2) (see PARA 1378), direct that the direction be treated, for the purpose of enforcement, as if it were contained in an order made by the High Court: Courts and Legal Services Act 1990 Sch 8 para 17(2) (as prospectively repealed: see note 1). Where the committee is considering or has

considered an application or complaint with respect to a licensed conveyancer and is of the opinion that the Council should consider whether to take any of the steps with respect to him, it must inform the Council: Sch 8 para 20 (as so prospectively repealed). As to the power to examine files see Sch 8 para 21; and PARA 1390.

15 'Prescribed' means prescribed by the regulations: Courts and Legal Services Act 1990 Sch 8 para 18(4) (as prospectively repealed: see note 1).

16 Courts and Legal Services Act 1990 Sch 8 para 18(1) (amended by SI 2003/1887; and as prospectively repealed: see note 1). The regulations may provide for the exemption of such classes of client as may be prescribed: Sch 8 para 18(2) (as prospectively repealed: see note 1). This power has been delegated by the Council to the Investigating Committee: see the Council For Licensed Conveyancers' Investigating Committee Rules 2004 r 6.

17 Courts and Legal Services Act 1990 Sch 8 para 18(3) (as prospectively repealed: see note 1). Where the Council takes any of the steps with respect to a licensed conveyancer it may also direct him to pay to the Council (1) the amount of the fee so repayable by the Council to the client; and (2) an amount which is calculated by the Council as the cost to it of dealing with the complaint, or which in its opinion represents a reasonable contribution towards that cost: Sch 8 para 19 (as so prospectively repealed). As to the delegation of this power to the Investigating Committee see note 15.

UPDATE

1383 Steps which may be taken in respect of inadequate professional services

NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 21 paras 83, 100(e) is 31 March 2009: SI 2009/503.

TEXT AND NOTE 9--Head (3). Now, not exceeding £15,000: Courts and Legal Services Act 1990 Sch 8 para 16(1) (amended by SI 2009/501).

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(iv) Intervention by the Council for Licensed Conveyancers

1384. Circumstances in which the Council for Licensed Conveyancers may intervene.

The intervention powers conferred¹ on the Council for Licensed Conveyancers² are exercisable³ where:

- 2102 (1) the Council has reason to suspect dishonesty⁴ on the part of a licensed conveyancer⁵, an employee or associate⁶ of a licensed conveyancer or the personal representatives of a deceased licensed conveyancer, in connection with that licensed conveyancer's practice⁷;
- 2103 (2) following the death of a licensed conveyancer who immediately before his death was practising as a sole practitioner⁸, the Council considers that there has been undue delay on the part of that person's personal representatives in connection with his practice⁹;
- 2104 (3) the Council is satisfied that a licensed conveyancer has failed to comply with any rules¹⁰ relating to the keeping of accounts and client accounts and to the interest on clients' money¹¹;
- 2105 (4) a licensed conveyancer has made a composition or arrangement with his creditors¹²;
- 2106 (5) a licensed conveyancer has been committed to prison in any civil or criminal proceedings¹³;
- 2107 (6) the Council is satisfied that a licensed conveyancer practising as a sole practitioner is incapacitated by illness or accident to such an extent as to be unable to attend to his practice¹⁴;
- 2108 (7) a judge's emergency powers in relation to the property and affairs of a person suffering from mental disorder have been exercised in respect of a licensed conveyancer¹⁵;
- 2109 (8) the licence¹⁶ held by any person:
 - 37 29. (a) has been suspended or has terminated¹⁷; or
 - 30. (b) has been revoked or suspended by an order of the Discipline and Appeals Committee¹⁸; or
 - 31. (c) has expired and no further licence has been issued to him¹⁹;
- 38 2110 (9) the Council is satisfied that a sole licensed conveyancer has abandoned his practice²⁰; or
- 2111 (10) the Council is satisfied that a licensed conveyancer has been practising in breach of any condition imposed on him in connection with any relevant licence²¹ of his²².

On the death of a licensed conveyancer who immediately before his death was practising as a sole practitioner, certain powers²³ exercisable on intervention apply to the client accounts of his practice²⁴.

The Council's intervention powers are also exercisable²⁵ where:

- 2112 (i) a complaint is made to the Council that there has been undue delay on the part of a licensed conveyancer in connection with any matter in which he or his firm was instructed on behalf of a client²⁶; and
- 2113 (ii) the Council by notice in writing invites the conveyancer to give an explanation within such period following the giving of the notice as may be specified, being a period of not less than eight days²⁷; and
- 2114 (iii) the conveyancer fails to give an explanation which the Council regards as satisfactory within that period²⁸; and
- 2115 (iv) the Council gives notice of the failure to the conveyancer and (at the same or any later time) notice that those intervention powers are accordingly exercisable in his case²⁹.

Where the intervention powers are exercisable in relation to a licensed conveyancer, they continue to be exercisable after his death or after his licence has been revoked or suspended or has otherwise ceased to be in force³⁰.

1 le the powers conferred by the Administration of Justice Act 1985 s 31(1), Sch 5 Pt II: see PARA 1385 et seq. As to the exercise of those powers in relation to recognised bodies see PARA 1406. As to the meaning of 'recognised body' see PARA 1392 note 14.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 Administration of Justice Act 1985 s 31(1).

4 As from a day to be appointed the intervention powers are also exercisable where the Council has reason to suspect dishonesty on the part of a licensed conveyancer in connection with: (1) the business of any person of whom that licensed conveyancer is or was an employee, or of any body of which he is or was a manager; or (2) any business which is or was carried on by that licensed conveyancer as a sole trader: Administration of Justice Act 1985 Sch 5 para 1(1)(aa) (prospectively added by Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (2)(b)). At the date at which this volume states the law no such day had been appointed.

5 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

6 As to the meaning of 'associate' see PARA 1348 note 4.

7 Administration of Justice Act 1985 Sch 5 para 1(1)(a). As from a day to be appointed Sch 5 para 1(1)(a) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (2)(a) to allow the exercise of such powers in connection also with a former practice or any trust of which the relevant licensed conveyancer is or was a trustee. At the date at which this volume states the law no such day had been appointed.

8 Any reference for these purposes to a licensed conveyancer practising as a sole practitioner is a reference to a licensed conveyancer practising either as the sole principal in the practice or in partnership with other persons of whom none is a licensed conveyancer: Administration of Justice Act 1985 s 39(2).

9 Administration of Justice Act 1985 Sch 5 para 1(1)(b). As from a day to be appointed Sch 5 para 1(1)(b) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (2)(c) to allow the exercise of such powers in connection also with any trust. At the date at which this volume states the law no such day had been appointed.

10 le any rules made under the Administration of Justice Act 1985 s 22 (see PARA 1353) or s 23 (see PARA 1357): Sch 5 para 1(1)(c). As from a day to be appointed Sch 5 para 1(1)(c) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (2)(d) to include rules made under the Administration of Justice Act 1985 s 20 (see PARA 1342), and s 21(3)(c) (see PARA 1348). At the date at which this volume states the law no such day had been appointed.

11 Administration of Justice Act 1985 Sch 5 para 1(1)(c). The powers conferred by Sch 5 Pt II are only exercisable under this provision if the Council has given the licensed conveyancer notice in writing that it is satisfied that he has failed to comply with rules specified in the notice and also (at the same or any later time) notice that those powers are accordingly exercisable in his case: Sch 5 para 1(2). As to the meanings of 'client' and 'client account' see PARA 1353 note 5. As to the service of notices see PARA 1329 note 4. As from a day to be

appointed Sch 5 para 1(2) is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 para 31, Sch 23. At the date at which this volume states the law no such day had been appointed.

12 Administration of Justice Act 1985 Sch 5 para 1(1)(d).

13 Administration of Justice Act 1985 Sch 5 para 1(1)(e).

As from a day to be appointed the intervention powers are exercisable when the Council is satisfied that a licensed conveyancer has abandoned his practice, or that a licensed conveyancer has been practising in breach of any conditions subject to which his licence has effect: Sch 5 para 1(1)(ea), (eb) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (2)(e)). At the date at which this volume states the law no such day had been appointed.

14 Administration of Justice Act 1985 Sch 5 para 1(1)(f). As from a day to be appointed Sch 5 para 1(1)(f) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1, para 31(1), (2)(f) to include injury as reason for a licensed conveyancer's incapacity. At the date at which this volume states the law no such day had been appointed.

15 Administration of Justice Act 1985 Sch 5 para 1(1)(g). The judge's emergency powers are those granted under the Mental Health Act 1983 s 98 (repealed). As from a day to be appointed Sch 5 para 1(1)(g) is substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1, para 31(1), (2)(g) so that the intervention powers are exercisable where a licensed conveyancer lacks capacity (within the meaning of the Mental Capacity Act 2005 (see **MENTAL HEALTH** vol 30(2) (Reissue) PARA 641)) to act as a licensed conveyancer and powers under ss 15-20 or s 48 (see **MENTAL HEALTH**) are exercisable in relation to the licensed conveyancer. At the date at which this volume states the law no such day had been appointed.

16 As to the meaning of 'licence' see PARA 1319 note 3.

17 Ie in accordance with the Administration of Justice Act 1985 s 18: see PARA 1332.

18 Ie an order under the Administration of Justice Act 1985 s 26: see PARA 1378. As to the Discipline and Appeals Committee see PARA 1362.

19 Administration of Justice Act 1985 Sch 5 para 1(1)(h). For the purposes of Sch 5 paras 2-12, any person in relation to whom the intervention powers are exercisable by virtue of Sch 5 para 1(1)(h) is deemed to be a licensed conveyancer: Sch 5 para 1(3).

As from a day to be appointed the intervention powers are exercisable where the Council is satisfied that it is necessary to exercise them in relation to a licensed conveyancer to protect the interests of clients (or former or potential clients) of the licensed conveyancer or his firm, or the interests of the beneficiaries of any trust of which the licensed conveyancer is or was a trustee: Sch 5 para 1(1)(i) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (2)(h)). At the date at which this volume states the law no such day had been appointed.

20 Courts and Legal Services Act 1990 s 53(7), Sch 8 para 13(1)(a). As from a day to be appointed Sch 8 para 13 is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 2 paras 33, 35(1), (11), Sch 23. At the date at which this volume states the law no such day had been appointed.

21 As to the meaning of 'relevant licence' see PARA 1380 note 4.

22 Courts and Legal Services Act 1990 Sch 8 para 13(1)(b) (as prospectively repealed: see note 20). The powers conferred by the Administration of Justice Act 1985 Sch 5 Pt II and exercisable by virtue of the Courts and Legal Services Act 1990 Sch 8 para 13(1)(b) may only be exercised if the Council has given the licensed conveyancer notice in writing that it is satisfied as mentioned in Sch 8 para 13(1)(b) and also, at the same or any later time, notice in writing that the powers so conferred are accordingly exercisable in his case: Sch 8 para 13(1), (2) (as prospectively repealed: see note 20).

23 Ie the powers under the Administration of Justice Act 1985 Sch 5 paras 6-8: see PARA 1385.

24 Administration of Justice Act 1985 Sch 5 para 2.

25 Administration of Justice Act 1985 Sch 5 para 3. Schedule 5 para 3 is subject to Sch 5 paras 5(4), 10(3): see PARAS 1385, 1387. As from a day to be appointed Sch 5 para 3 is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (3)(a) to substitute the reference to the Administration of Justice Act 1985 Sch 5 para 10(3) with a reference to Sch 5 para 10(9). At the date at which this volume states the law no such day had been appointed.

26 Administration of Justice Act 1985 Sch 5 para 3(a). As from a day to be appointed intervention powers are exercisable where the Council is satisfied that there has been undue delay on the part of a licensed

conveyancer in connection with any matter in which he or his firm is or was acting on behalf of a client or in connection with any trust: Sch 5 para 3(a) (prospectively amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (3)(b)). At the date at which this volume states the law no such day had been appointed.

27 Administration of Justice Act 1985 Sch 5 para 3(b).

28 Administration of Justice Act 1985 Sch 5 para 3(c).

29 Administration of Justice Act 1985 Sch 5 para 3(d).

30 Administration of Justice Act 1985 Sch 5 para 4(1).

UPDATE

1384 Circumstances in which the Council for Licensed Conveyancers may intervene

NOTES--Day appointed in relation to amendments made by Legal Services Act 2007 Schs 17, 23 is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(iv) Intervention by the Council for Licensed Conveyancers/1385. Powers exercisable on intervention in relation to money.

1385. Powers exercisable on intervention in relation to money.

The High Court, on the application of the Council for Licensed Conveyancers¹, may order that no payment may be made without the leave of the court by any person (whether or not named in the order) of any money held by him on behalf of the licensed conveyancer² or his firm³. A person is not treated as having disobeyed such an order by making a payment of money if he satisfies the court that he exercised due diligence to ascertain whether it was money to which the order related but nevertheless failed to ascertain that the order related to it⁴.

Without prejudice to the above provisions, if the Council passes a resolution to the effect that any specified sums of money⁵, and the right to recover or receive them, are to vest in the Council, all such sums vest accordingly (whether received by the person holding them before or after the Council's resolution) and are held by the Council on trust to exercise in relation to them the intervention powers conferred on the Council and, subject to those powers⁶, on trust for the persons beneficially entitled to them⁷. The Council must serve on the licensed conveyancer or his firm and on any other person having possession of specified sums of money⁸ a certified copy of the Council's resolution and a notice prohibiting the payment out of any such sums of money⁹. If any person on whom such a notice has been served pays out sums of money at a time when such payment is prohibited by the notice, he is guilty of an offence¹⁰. The person on whom such a notice was served may apply¹¹ to the High Court for an order directing the Council to withdraw the notice¹²; and if the court makes such an order, it has power also to make such other order with respect to the matter as it may think fit¹³.

As from a day to be appointed, and without prejudice to the above provisions, if the Council passes a resolution to the effect that any right to recover or receive debts due to the licensed conveyancer or his firm in connection with his practice or former practice¹⁴ vests in the Council, those rights vest accordingly¹⁵. Any sums recovered by the Council by virtue of the exercise of such rights vest in the Council and must be held by it on trust to exercise in relation to them the intervention powers conferred on the Council¹⁶, and subject to those powers and to any relevant rules¹⁷, upon trust for the persons beneficially entitled to them¹⁸. The Council must serve on the licensed conveyancer or his firm, and any person who owes a debt to which the order applies a certified copy of the its resolution¹⁹. At the date at which this volume states the law no such day had been appointed.

If the Council takes possession of any specified sum of money²⁰, the Council must pay it into a special account in the name of the Council or of a person nominated on behalf of the Council²¹. Any such person holds that sum on trust to permit the Council to exercise in relation to it the intervention powers conferred on the Council and, subject to those powers²², on trust for the persons beneficially entitled to it²³. A bank or other financial institution at which a special account is kept is, however, under no obligation to ascertain whether it is being dealt with properly²⁴.

If the High Court is satisfied, on an application by the Council, that there is reason to suspect that any person holds money on behalf of the licensed conveyancer or his firm, the court may²⁵ require that person to give the Council information as to any such money and the accounts in which it is held²⁶.

These powers in relation to sums of money are exercisable notwithstanding any lien on them or right to their possession²⁷.

- 1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.
- 2 In whatever manner and whether it was received before or after the making of the order: Administration of Justice Act 1985 s 31(1), Sch 5 para 5(1). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. See also PARA 1384 note 19.
- 3 Administration of Justice Act 1985 Sch 5 para 5(1). As to the circumstances in which these powers are exercisable see PARA 1384. No such order takes effect in relation to any person to whom it applies unless the Council has served a copy of the order on him (whether or not he is named in it) and, in the case of a bank or other financial institution, has indicated at which of its branches the Council believes that the money to which the order relates is held: Sch 5 para 5(2). The references to the licensed conveyancer or his firm in Sch 5 paras 5(1), 6(2), (3), 8 (see the text and notes 5, 9, 26) include, in any case where the licensed conveyancer has died, references to his personal representatives: Sch 5 para 4(2). As from a day to be Sch 5 para 4(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (4)(a) so that the same applies to the references to the licensed conveyancer or his firm in the Administration of Justice Act 1985 Sch 5 para 6A (see the text and notes 14-19). At the date at which this volume states the law no such day had been appointed. As to the service of notices see PARA 1329 note 4.
- 4 Administration of Justice Act 1985 Sch 5 para 5(3). The provisions of Sch 5 para 5 do not apply where the powers conferred by Sch 5 Pt II are exercisable by virtue of Sch 5 para 3 (see PARA 1384 heads (i)-(iv)): Sch 5 para 5(4).
- 5 In sums of money to which the Administration of Justice Act 1985 Sch 5 para 6 applies: Sch 5 para 6(1). Schedule 5 para 6 applies: (1) where the powers conferred by Sch 5 para 6 are exercisable by virtue of Sch 5 para 1 (see PARA 1384), to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with his practice; (2) where they are exercisable by virtue of Sch 5 para 2 (see PARA 604), to all sums of money in any client account; and (3) where they are exercisable by virtue of Sch 5 para 3 (see PARA 1384), to all sums of money held by or on behalf of the licensed conveyancer or his firm in connection with the matter to which the complaint relates: Sch 5 para 6(2). As from a day to be appointed Sch 5 para 6(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (5)(b) to apply also to all sums of money held by or on behalf of the licensed conveyancer's former practice or any trust of which he is or was a trustee. At the date at which this volume states the law no such day had been appointed. As to the meaning of 'client account' see PARA 1353 note 5.
- 6 In the powers conferred by the Administration of Justice Act 1985 Sch 5 Pt II (see PARAS 1386-1389). As from a day to be appointed Sch 5 para 6(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (5)(a) to make the exercise of the powers subject also to rules under the Administration of Justice Act 1985 Sch 5 para 6B (see note 7). At the date at which this volume states the law no such day had been appointed.
- 7 Administration of Justice Act 1985 Sch 5 para 6(1). As from a day to be appointed the Council may make rules governing its treatment of such sums vested in it, which rules may in particular make provision in respect of cases where the Council, having taken such steps to do so as are reasonable in all the circumstances of the case, is unable to trace the person or persons beneficially entitled to any such sum vested in the Council under (including provision which requires amounts to be paid into or out of a fund maintained under s 21 (see PARA 1348): Administration of Justice Act 1985 Sch 5 para 6B (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (6)). At the date at which this volume states the law no such day had been appointed.
- 8 See note 5.
- 9 Administration of Justice Act 1985 Sch 5 para 6(3).
- 10 Administration of Justice Act 1985 Sch 5 para 6(6). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 5 para 6(6). As to the standard scale see PARA 571 note 1. As to offences by bodies corporate see PARA 599.
- 11 The application must be made within eight days of the service of the notice, and on giving not less than 48 hours' notice in writing to the Council and, if the notice gives the name of the solicitor instructed by the Council, to that solicitor: Administration of Justice Act 1985 Sch 5 para 6(4).
- 12 Administration of Justice Act 1985 Sch 5 para 6(4).
- 13 Administration of Justice Act 1985 Sch 5 para 6(5).

- 14 Administration of Justice Act 1985 Sch 5 para 6A(2) (Sch 5 para 6A prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (6)).
- 15 Administration of Justice Act 1985 Sch 5 para 6A(1) (as prospectively added: see note 14).
- 16 Ie the powers conferred by the Administration of Justice Act 1985 Sch 5 Pt II (see PARAS 1386-1389).
- 17 Ie rules made under the Administration of Justice Act 1985 Sch 8 para 6B (see note 7).
- 18 Administration of Justice Act 1985 Sch 5 para 6A(3) (as prospectively added: see note 14). The Council may make rules governing its treatment of such sums vested in it, which rules may in particular make provision in respect of cases where the Council, having taken such steps to do so as are reasonable in all the circumstances of the case, is unable to trace the person or persons beneficially entitled to any such sum vested in the Council (including provision which requires amounts to be paid into or out of a fund maintained under s 21 (see PARA 1348)); Administration of Justice Act 1985 Sch 5 para 6B (as prospectively added: see note 7).
- 19 Administration of Justice Act 1985 Sch 5 para 6A(4) (as prospectively added: see note 14).
- 20 See note 5.
- 21 Administration of Justice Act 1985 Sch 5 para 7(1).
- 22 See note 6. As from a day to be appointed the Administration of Justice Act 1985 Sch 5 para 7(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (7) to make the exercise of the powers subject also to rules under the Administration of Justice Act 1985 Sch 5 para 6B (see note 7). At the date at which this volume states the law no such day had been appointed.
- 23 Administration of Justice Act 1985 Sch 5 para 7(1).
- 24 Administration of Justice Act 1985 Sch 5 para 7(2).
- 25 Ie without prejudice to the Administration of Justice Act 1985 Sch 5 paras 5-7: see the text and notes 1-24.
- 26 Administration of Justice Act 1985 Sch 5 para 8. As from a day to be appointed if the High Court is satisfied, on an application by the Council, that there is reason to suspect that any person holds money on behalf of the licensed conveyancer or his firm, or has information which is relevant to identifying any money held by or on behalf of the licensed conveyancer or his firm, the court may require that person to give the Council information as to any such money and the accounts in which it is held: Sch 5 para 8 (prospectively amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (8)). At the date at which this volume states the law no such day had been appointed.
- 27 Administration of Justice Act 1985 Sch 5 para 11.

UPDATE

1385 Powers exercisable on intervention in relation to money

TEXT AND NOTES--Day appointed in relation to these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(iv) Intervention by the Council for Licensed Conveyancers/1386. Powers exercisable on intervention in relation to documents.

1386. Powers exercisable on intervention in relation to documents.

The Council for Licensed Conveyancers¹ may give notice to the licensed conveyancer² or his firm³ requiring the production or delivery of certain documents⁴ to any person appointed by the Council at a time and place to be fixed by the Council⁵. Except in a case where an application has been made to the High Court⁶, if any person having possession of any such documents refuses, neglects or otherwise fails to comply with such a requirement, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷.

The person appointed by the Council may take possession of any such documents on behalf of the Council⁸.

The High Court, on the application of the Council, may order a person so required to produce or deliver documents to produce or deliver them to any person appointed by the Council at such time and place as may be specified in the order, and authorise the person so appointed to take possession of them on behalf of the Council⁹. If, on an application by the Council, the High Court is satisfied that there is reason to suspect that documents in relation to which the powers to require production or delivery are exercisable have come into the possession of some person other than the licensed conveyancer or his firm, the court may order that person to produce or deliver the documents to any person appointed by the Council at such time and place as may be specified in the order and authorise the person so appointed to take possession of them on behalf of the Council¹⁰.

On making an order under these provisions, or at any later time, the court, on the application of the Council, may authorise a person appointed by the Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of any documents to which the order relates¹¹.

The Council, on taking possession of any documents under these provisions, must serve upon the licensed conveyancer or his personal representatives and on any other person from whom they were received on the Council's behalf or from whose premises they were taken a notice that possession has been taken on the date specified in the notice¹². A person on whom such a notice is served may apply¹³ to the High Court for an order directing the Council to deliver the documents to such person as the applicant may require¹⁴. On such an application the court may make such order as it thinks fit¹⁵.

The Council may¹⁶ apply to the High Court for an order as to the disposal or destruction of any documents in its possession¹⁷ and the court may make such order as it thinks fit¹⁸.

Except so far as its right to do so may be restricted by an order on any such application¹⁹, the Council may take copies of or extracts from any documents in its possession and require any person to whom it is proposed to deliver such documents to give a reasonable undertaking to supply copies or extracts to the Council as a condition precedent to delivery²⁰.

These powers in relation to documents are exercisable notwithstanding any lien on them or right to their possession²¹.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. See also PARA 1384 note 19.

3 The references to the licensed conveyancer or his firm in the Administration of Justice Act 1985 s 31(1), Sch 5 para 9(1), (5) (see the text and notes 4-5, 10) include, in any case where the licensed conveyancer has died, references to his personal representatives: Sch 5 para 4(2). As from a day to be appointed Sch 5 para 4(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (4)(b) to include references to the licensed conveyancer or his firm in the Administration of Justice Act 1985 Sch 5 para 9(6) (see text and note 11). At the date at which this volume states the law no such day had been appointed.

4 The documents are: (1) where the powers conferred by the Administration of Justice Act 1985 Sch 5 Pt II (see PARAS 1385, 1387-1389) are exercisable by virtue of Sch 5 para 1 (see PARA 1384), all documents in the possession of the licensed conveyancer or his firm in connection with his practice; and (2) where the powers are exercisable by virtue of Sch 5 para 3 (see PARA 1384), all documents in the possession of the licensed conveyancer or his firm in connection with the matters to which the complaint relates (whether or not they also relate to other matters): Sch 5 para 9(1)(a), (b). As from a day to be appointed Sch 5 para 9(1)(a), (b) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(a), (b) to include all documents in the possession or under the control of a licensed conveyancer, and in connection with his practice, former practice or with any trust of which the licensed conveyancer is or was a trustee, and to remove the reference to a complaint. At the date at which this volume states the law no such day had been appointed.

5 Administration of Justice Act 1985 Sch 5 para 9(1). As to the circumstances in which these powers are exercisable see PARA 1384; and as to the service of notices see PARA 1329 note 4.

As from a day to be appointed, in the case of a document which consists of information which is stored in electronic form, the requirement imposed by a notice under Sch 5 para 9(1) or an order under Sch 5 para 9(4) or (5), is a requirement to produce or deliver the information in a form in which it is legible or from which it can readily be produced in a legible form: Sch 5 para 9(5A) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(e)). At the date at which this volume states the law no such day had been appointed.

6 le under the Administration of Justice Act 1985 Sch 5 para 9(4): see the text and note 9.

7 Administration of Justice Act 1985 Sch 5 para 9(3). As to the standard scale see PARA 571 note 1. As to offences by bodies corporate see PARA 599.

As from a day to be appointed Sch 5 para 9(3) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(c) to include all documents in the possession or under the control of the licensed conveyancer or his firm. At the date at which this volume states the law no such day had been appointed.

8 Administration of Justice Act 1985 Sch 5 para 9(2).

9 Administration of Justice Act 1985 Sch 5 para 9(4). As to documents stored in electronic form see also note 5.

10 Administration of Justice Act 1985 Sch 5 para 9(5). As to documents stored in electronic form, see also note 5. As from a day to be appointed Sch 5 para 9(5) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(d) to include all documents in the possession or under the control of a person other than the licensed conveyancer or his firm. At the date at which this volume states the law no such day had been appointed.

11 Administration of Justice Act 1985 Sch 5 para 9(6). As from a day to be appointed Sch 5 para 9(6) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(f), (g) to additionally enable a person appointed by the Council to enter any premises (using such force as is reasonably necessary) to search for and take possession of any property in the possession or under the control of the licensed conveyancer or his firm, or in the case of an order under the Administration of Justice Act 1985 Sch 5 para 9(5) (see the text and note 10), which was in the possession or under the control of such a person and has come into the possession or under the control of the person in respect of whom the order is made, which the Council reasonably requires for the purpose of accessing information contained in documents to which the order relates, and to use such property for that purpose. At the date at which this volume states the law no such day had been appointed.

12 Administration of Justice Act 1985 Sch 5 para 9(7). As from a day to be appointed Sch 5 para 9(7) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(h) to make the provision apply to documents or other property. At the date at which this volume states the law no such day had been appointed.

13 le subject to the Administration of Justice Act 1985 Sch 5 para 9(9) and on giving not less than 48 hours' notice to the Council and, if the notice gives the name of the solicitor instructed by the Council, to that solicitor: Sch 5 para 9(8). Such a notice must be given within eight days of service of the Council's notice under Sch 5 para 9(7): para 9(9).

14 Administration of Justice Act 1985 Sch 5 para 9(8). As from a day to be appointed Sch 5 para 9(8) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(i) to make the provision apply to documents or other property. At the date at which this volume states the law no such day had been appointed.

15 Administration of Justice Act 1985 Sch 5 para 9(11).

16 Ie without prejudice to the Administration of Justice Act 1985 Sch 5 paras 1-8 (see PARAS 1384-1385) and Sch 5 para 9(1)-(9) (see the text and notes 1-14): Sch 5 para 9(10).

17 Ie documents in the Council's possession by virtue of the Administration of Justice Act 1985 Sch 5 para 9 or Sch 5 para 10 (see PARA 1387): Sch 5 para 9(10). As from a day to be appointed Sch 5 para 9(10) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (9)(j) to make the provision apply to documents or other property. At the date at which this volume states the law no such day had been appointed.

18 Administration of Justice Act 1985 Sch 5 para 9(10), (11) (Sch 5 para 9(10) as prospectively amended: see note 17).

19 Ie any application under the Administration of Justice Act 1985 Sch 5 para 9(8) or (10): Sch 5 para 9(12).

20 Administration of Justice Act 1985 Sch 5 para 9(12).

21 Administration of Justice Act 1985 Sch 5 para 11. As from a day to be appointed Sch 5 para 11 is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (12) to make the provision apply to documents or other property. At the date at which this volume states the law no such day had been appointed.

UPDATE

1386 Powers exercisable on intervention in relation to documents

NOTES--Day appointed in relation to amendments made by Legal Services Act 2007 Sch 17 para 31 is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(iv) Intervention by the Council for Licensed Conveyancers/1387. Powers exercisable on intervention in relation to mail and other redirected communications.

1387. Powers exercisable on intervention in relation to mail and other redirected communications.

Until a day to be appointed the following provisions have effect¹. The High Court, on the application of the Council for Licensed Conveyancers², may from time to time order that, for such time not exceeding 18 months as the court thinks fit, postal packets³ addressed to the licensed conveyancer⁴ or his firm⁵ at any place or places mentioned in the order are to be redirected to the Council or any person appointed by the Council at any other address mentioned in the order⁶. The Council, or that person on its behalf, may take possession of any such packets received at that address⁷. The Council may apply to the High Court for an order as to the disposal or destruction of any documents in its possession by virtue of these provisions⁸.

As from that day, the following provisions have effect⁹. The High Court, on the application of the Council, may from time to time make a communications redirection order¹⁰, which is to say, an order that specified communications¹¹ to the licensed conveyancer or his firm are to be directed, in accordance with the order, to the Council, or any person appointed by the Council¹². Such an order has effect for such time not exceeding 18 months as is specified in the order¹³. Where a communications redirection order has effect, the Council or the person appointed by the Council may take possession or receipt of the communications redirected in accordance with the order¹⁴. Where a communications redirection order is made the Council must pay (in the case of an order relating to postal packets¹⁵) the postal operator¹⁶ concerned, or (in any other case) the person specified in the order, the like charges (if any) as would have been payable for the redirection of the communications to which the order relates if the addressee had permanently ceased to occupy or use the premises or other destination of the communications and had applied to the postal operator or the specified person (as the case may be) to redirect the communications to him as mentioned in the order¹⁷. The High Court may, on the application of the Council, authorise the Council, or a person appointed by it, to take such steps as may be specified in the order in relation to any website purporting to be or have been maintained by or on behalf of the licensed conveyancer or his firm if the High Court is satisfied that the taking of those steps is necessary to protect the public interest or the interests of clients (or potential or former clients) of the licensed conveyancer or his firm¹⁸.

Communications redirection orders do not apply where the powers of intervention¹⁹ are exercisable by virtue of an undue delay²⁰.

At the date at which this volume states the law no such day had been appointed.

1 As from a day to be appointed the Administration of Justice Act 1985 Sch 5 para 10 is substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (10). At the date at which this volume states the law no such day had been appointed.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 ie postal packets as defined by the Postal Services Act 2000 s 125(1): see **POST OFFICE**.

4 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. See also PARA 1384 note 19.

5 This reference to the licensed conveyancer or his firm includes, in any case where the licensed conveyancer has died, references to his personal representatives: Administration of Justice Act 1985 s 31(1), Sch 5 para 4(2).

6 Administration of Justice Act 1985 Sch 5 para 10(1) (amended by SI 2001/1149; and as prospectively substituted (see note 1)). As to the circumstances in which these powers are exercisable see PARA 1384. The Administration of Justice Act 1985 Sch 5 para 10 does not apply where the powers conferred by Sch 5 Pt II (see PARAS 1385-1386, 1388-1389) are exercisable by virtue of Sch 5 para 3 (see PARA 1384): Sch 5 para 10(3) (as so prospectively substituted).

7 Administration of Justice Act 1985 Sch 5 para 10(1) (as prospectively substituted: see note 1). Where such an order is made, the Council must pay the postal operator the same charges (if any) as would have been payable for the redirection of the packets if the addressee had permanently ceased to occupy the premises to which they were addressed and had applied to the postal operator to redirect them to him at the address mentioned in the order: Sch 5 para 10(2) (amended by SI 2001/1149; and as so prospectively substituted). 'Postal operator' has the meaning given by the Postal Services Act 2000 s 125(1) (see **POST OFFICE**).

8 See the Administration of Justice Act 1985 Sch 5 para 9(10), (11); and PARA 1386.

9 See note 1.

10 Administration of Justice Act 1985 Sch 5 para 10(1) (as prospectively substituted: see note 1).

11 For these purposes 'specified communications' means communications of such description as are specified in the order, and may include (1) communications in the form of a postal packet; (2) electronic communications; (3) communications by telephone: Administration of Justice Act 1985 Sch 5 para 10(3) (as prospectively substituted: see note 1).

12 Administration of Justice Act 1985 Sch 5 para 10(2) (as prospectively substituted: see note 1). This reference, and the reference in para 10(7) (as so prospectively substituted) to the licensed conveyancer or his firm includes, in any case where the licensed conveyancer has died, references to his personal representatives: Administration of Justice Act 1985 s 31(1), Sch 5 para 4(2).

13 Administration of Justice Act 1985 Sch 5 para 10(4) (as prospectively substituted: see note 1).

14 Administration of Justice Act 1985 Sch 5 para 10(5) (as prospectively substituted: see note 1).

15 'Postal packet' has the meaning given by the Postal Services Act 2000 s 125(1) (see **POST OFFICE**): Administration of Justice Act 1985 Sch 5 para 10(9) (as prospectively substituted: see note 1).

16 'Postal operator' has the meaning given by the Postal Services Act 2000 s 125(1) (see **POST OFFICE**): Administration of Justice Act 1985 Sch 5 para 10(9) (as prospectively substituted: see note 1).

17 Administration of Justice Act 1985 Sch 5 para 10(6) (as prospectively substituted: see note 1).

18 Administration of Justice Act 1985 Sch 5 para 10(7) (as prospectively substituted: see note 1). See also note 12.

19 I.e. the powers conferred by the Administration of Justice Act 1985 s 31(1), Sch 5 Pt II (see PARAS 1385-1386, 1388-1389).

20 Administration of Justice Act 1985 Sch 5 para 10(9) (as prospectively substituted: see note 1). Powers exercisable by virtue of an undue delay refers to powers exercisable by virtue of Sch 5 para 3 (see PARA 1384).

UPDATE

1387-1389 Powers exercisable on intervention in relation to mail and other redirected communications ... Costs

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(iv) Intervention by the Council for Licensed Conveyancers/1388. Powers exercisable on intervention in relation to trusts.

1388. Powers exercisable on intervention in relation to trusts.

As from a day to be appointed the following provisions have effect¹. If the licensed conveyancer or his personal representative is a trustee of a trust, the Council for Licensed Conveyancers² may apply to the High Court for an order for the appointment of a new trustee in substitution for him³. At the date at which this volume states the law no such day had been appointed.

1 As from a day to be appointed the Administration of Justice Act 1985 s 31(1), Sch 5 para 10A is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (11). At the date at which this volume states the law no such day had been appointed.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 Administration of Justice Act 1985 Sch 5 para 10A(1) (as prospectively added: see note 1). The Trustee Act 1925 has effect in relation to an appointment of a new trustee under this provision as it has effect in relation to an appointment under s 41 of that Act (see **TRUSTS** vol 48 (2007 Reissue) PARA 849): Administration of Justice Act 1985 Sch 5 para 10A(2) (as prospectively added: see note 1).

UPDATE

1387-1389 Powers exercisable on intervention in relation to mail and other redirected communications ... Costs

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(iv) Intervention by the Council for Licensed Conveyancers/1389. Costs.

1389. Costs.

Any costs incurred by the Council for Licensed Conveyancers¹ for the purposes of the statutory provisions relating to intervention in a licensed conveyancer's practice², including the costs of any person exercising intervention powers³ on behalf of the Council, must be paid by the licensed conveyancer⁴ or his personal representatives and are recoverable from him or them as a debt owing to the Council⁵.

As from a day to be appointed the following provisions have effect⁶. The High Court, on the application of the Council, may order a former partner of the licensed conveyancer to pay a specified⁷ proportion of the incurred costs⁸, but only if it is satisfied that the conduct (or any part of the conduct) by reason of which the powers to intervene were conferred were exercisable in relation to the licensed conveyancer was conduct carried on with the consent or connivance of, or was attributable to any neglect on the part of, the former partner⁹. At the date at which this volume states the law no such day had been appointed.

These powers in relation to sums of money are exercisable notwithstanding any lien on them or right to their possession¹⁰.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Ie the Administration of Justice Act 1985 s 31(1), Sch 5: see PARAS 1384-1388.

3 Ie under the Administration of Justice Act 1985 Sch 5 Pt II: see PARAS 1385-1388.

4 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. See also PARA 1384 note 19.

5 Administration of Justice Act 1985 Sch 5 para 12. Schedule 5 para 12 is subject to any order for the payment of costs that may be made on an application to the court under Sch 5: Sch 5 para 12.

6 As from a day to be appointed the Administration of Justice Act 1985 Sch 5 para 12A is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 para 31(1), (13). At the date at which this volume states the law no such day had been appointed.

7 For these purposes 'specified' means specified in the order made by the High Court: Administration of Justice Act 1985 Sch 5 para 12A(3) (as prospectively substituted: see note 1).

8 Administration of Justice Act 1985 Sch 5 para 12A(1) (as prospectively substituted: see note 1).

9 Administration of Justice Act 1985 Sch 5 para 12A(2) (as prospectively substituted: see note 1).

10 Administration of Justice Act 1985 Sch 5 para 11.

UPDATE

1387-1389 Powers exercisable on intervention in relation to mail and other redirected communications ... Costs

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(iv) Intervention by the Council for Licensed Conveyancers/1390. Examination of files.

1390. Examination of files.

Where the Investigating Committee¹ is satisfied that it is necessary to do so for the purposes of investigating any of certain allegations or complaints², the committee may give notice to the licensed conveyancer³ to whom the allegation or complaint relates, or to his firm, requiring the production or delivery to any person appointed by the committee, at a time and place to be fixed by the committee, of all documents in the possession of the licensed conveyancer or his firm in connection with the matters to which the allegation or complaint relates, whether or not they also relate to other matters⁴.

Where the Council for Licensed Conveyancers is satisfied that it is necessary to do so for the purpose of investigating any complaint made to it alleging professional misconduct by a licensed conveyancer, or relating to the quality of any professional services provided by a licensed conveyancer, the Council may give notice to the licensed conveyancer or his firm requiring the production or delivery to any person appointed by the Council, at a time and place to be fixed by the Council, of all documents in the possession of the licensed conveyancer or his firm in connection with the matters to which the complaint relates, whether or not they also relate to other matters⁵.

1 As to the Investigating Committee see PARA 1359 et seq.

2 Ie any such allegation or complaint as is mentioned in the Administration of Justice Act 1985 s 24(1)(a)(ii) or (iii) or s 24(1)(b) (see PARA 1359): s 31(2). As from a day to be appointed s 31(2) is amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 19(1), (2)(b), Sch 23, to remove the reference to the Administration of Justice Act 1985 s 24(1)(b). At the date at which this volume states the law no such day had been appointed.

3 This reference to a licensed conveyancer includes a reference to a person who was a licensed conveyancer when the conduct to which the allegation or complaint relates took place: Administration of Justice Act 1985 s 31(4). References to the licensed conveyancer in the provisions applied by s 31(3) (see note 4) are to be construed accordingly: s 31(4). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3. As to the service of notices see PARA 1329 note 4. As from a day to be appointed s 31(4) is amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 19(1), (4), Sch 23, to remove the reference to a complaint. At the date at which this volume states the law no such day had been appointed.

4 Administration of Justice Act 1985 s 31(2). As from a day to be appointed s 31(2) is amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 19(1), (2)(a), Sch 23, to remove the reference to a complaint. At the date at which this volume states the law no such day had been appointed.

The provisions of the Administration of Justice Act 1985 s 31(1), Sch 5 para 9(2)-(12) (see PARA 1386), Sch 5 para 11 (see PARAS 1385-1386), and Sch 5 para 12 (see PARA 1389) apply to the powers conferred on the Investigating Committee by s 31(2) as they apply to the powers conferred on the Council for Licensed Conveyancers by Sch 5 para 9(1) (see PARA 1386): s 31(3). Accordingly, in those provisions (1) any reference to the Council is to be construed as including a reference to the committee; (2) any reference to a person appointed, or to a requirement, under Sch 5 para 9(1) is to be construed as including a reference to a person appointed, or to a requirement, under s 31(2); and (3) any reference to any such documents as are mentioned in Sch 5 para 9(1) is to be construed as including a reference to any such documents as are mentioned in s 31(2): s 31(3). As to the Council for Licensed Conveyancers see PARA 1320 et seq.

As from a day to be appointed s 31(3) is amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 19(1), (3), Sch 23, to apply the Administration of Justice Act 1985 Sch 3 para 12A (see PARA 1389) to the powers conferred on the Investigating Committee by s 31(2). At the date at which this volume states the law no such day had been appointed.

5 Courts and Legal Services Act 1990 s 53(7), Sch 8 para 21(1). This power has been delegated by the Council to the Investigating Committee: see the Council For Licensed Conveyancers' Investigating Committee Rules 2004 r 6. As to the Investigating Committee see PARA 1359 et seq. The provisions of the Administration of Justice Act 1985 Sch 5 paras 9(2)-(12), 11, 12 apply in relation to the powers conferred by the Courts and Legal Services Act 1990 Sch 8 para 21(1) as they apply in relation to the powers conferred by the Administration of Justice Act 1985 Sch 5 para 9(1): Courts and Legal Services Act 1990 Sch 8 para 21(2). As from a day to be appointed Sch 8 para 21(1) is amended by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 83, 100(e), Sch 23, to remove the reference to a complaint alleging professional misconduct. At the date at which this volume states the law no such day had been appointed.

UPDATE

1390 Examination of files

NOTES--Day appointed in relation to amendments made by Legal Services Act 2007 is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(6) DISCIPLINARY AND OTHER PROCEEDINGS/(v) The Legal Services Ombudsman and the Office for Legal Complaints/1391. The Legal Services Ombudsman and the Office for Legal Complaints.

(v) The Legal Services Ombudsman and the Office for Legal Complaints

1391. The Legal Services Ombudsman and the Office for Legal Complaints.

Until a day to be appointed the Legal Services Ombudsman has jurisdiction to investigate allegations concerning the handling of complaints by the Council for Licensed Conveyancers¹, but has no jurisdiction to conduct such an investigation where a complaint is handled by the Discipline and Appeals Committee².

As from a day to be appointed, the Council will, as an approved regulator for the purposes of the Legal Services Act 2007, fall within the jurisdiction of the Office for Legal Complaints³.

1 See the Legal Services Ombudsman (Jurisdiction) 1990, SI 1990/2485, Schedule Pt 1; and PARA 425. As to the Legal Services Ombudsman see PARA 424 et seq. As to the Council for Licensed Conveyancers see PARA 1320 et seq.

As from a day to be appointed the office of Legal Services Ombudsman is abolished: see PARA 424 note 1. At the date at which this volume states the law no such day had been appointed.

2 Legal Services Ombudsman (Jurisdiction) 1990, SI 1990/2485, Schedule Pt 2; and PARA 426. As to the Discipline and Appeals Committee see PARA 1362.

3 As to the Office for Legal Complaints see para 442 et seq. As to the meaning of 'approved regulator' see para 358.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1392. Provision of conveyancing and other services by recognised bodies.

(7) RECOGNISED BODIES

1392. Provision of conveyancing and other services by recognised bodies.

The Council for Licensed Conveyancers¹ may make rules²:

- 2116 (1) making provision as to the management and control by licensed conveyancers³ (or by licensed conveyancers together with persons who are not licensed conveyancers) of bodies corporate carrying on businesses consisting of the provision of conveyancing services⁴ or advocacy⁵, litigation⁶ or probate services⁷;
- 2117 (2) prescribing the circumstances in which such bodies may be recognised by the Council as being suitable bodies to undertake the provision of such services⁸;
- 2118 (3) prescribing the conditions which (subject to any exceptions provided by the rules) must at all times be satisfied by bodies so recognised if they are to remain so recognised⁹; and
- 2119 (4) regulating the conduct of the affairs of such bodies¹⁰.

As from a day to be appointed, the Council may also make rules prescribing the Council's arrangements for authorising recognised bodies, for the purposes of the Legal Services Act 2007, to carry on reserved instrument activities, or the administration of oaths, within the meaning of that Act¹¹. At the date at which this volume states the law no such day had been appointed.

Rules made by the Council may also make provision:

- 2120 (a) for the manner and form in which applications for recognition¹² are to be made, and for the payment of fees in connection with such applications¹³;
- 2121 (b) for regulating the names that may be used by recognised bodies¹⁴;
- 2122 (c) as to the period for which any recognition granted¹⁵ is to remain in force¹⁶;
- 2123 (d) for the imposition by the Council, when granting recognition of a body corporate, of restrictions on the kinds of conveyancing and other professional services that it may undertake to provide as a recognised body, and for enabling such restrictions to be imposed by reference to criteria of general application¹⁷;
- 2124 (e) for the keeping by the Council of a list containing the names and principal places of business of all bodies corporate which are recognised bodies, and for the information contained in any such list to be available for inspection¹⁸;
- 2125 (f) for certain other rules¹⁹ to have effect in relation to recognised bodies with such additions, omissions or other modifications as appear to the Council to be necessary or expedient²⁰;
- 2126 (g) for empowering the Council to take such steps as it considers necessary or expedient to ascertain whether or not any rules applicable to recognised bodies by virtue of these provisions are being complied with²¹;
- 2127 (h) for the manner of service on recognised bodies of documents authorised or required²² to be served on such bodies²³.

As from a day to be appointed, the Council may also make provision:

- 2128 (i) for the payment of fees in connection with other applications under the rules²⁴;
- 2129 (ii) about the time when any recognition, or renewal of such recognition, takes effect and the period for which it is to remain in force²⁵;
- 2130 (iii) for the suspension or revocation of any such recognition, on such grounds and in such circumstances as may be prescribed in the rules²⁶;
- 2131 (iv) about the effect on the recognition of a partnership or other unincorporated body (the 'existing body') of any change in its membership, including provision for the existing body's recognition to be transferred where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business²⁷;
- 2132 (v) about the education and training requirements to be met by managers and employees of recognised bodies²⁸;
- 2133 (vi) for other relevant rules²⁹ to have effect in relation to managers and employees of recognised bodies with such additions, omissions or other modifications as appear to the Council to be necessary or expedient³⁰.

At the date at which this volume states the law no such day had been appointed.

A certificate signed by an officer of the Council and stating (A) that any body corporate is or is not, or was or was not at any time, a recognised body³¹; or (B) that no restrictions were imposed³² on the grant of a body corporate's recognition or that any particular restrictions were imposed, is evidence of the facts stated in the certificate unless the contrary is proved³³. A certificate purporting to be so signed is to be taken to have been so signed unless the contrary is proved³⁴.

In certain circumstances³⁵, the statutory prohibition on unqualified persons drawing certain instruments for reward³⁶ does not apply to a body corporate by reason of any act done by its officer³⁷ or employee when the body was a recognised body³⁸.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the making of rules generally see PARA 1326 note 2.

3 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

4 Administration of Justice Act 1985 s 32(1)(a). As to the meaning of 'conveyancing services' see PARA 1319 note 2. As from a day to be appointed s 32(1)(a) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (2) so that the Council may make rules as to the management and control of conveyancing services bodies. As to conveyancing services bodies see PARA 1395. At the date at which this volume states the law no such day had been appointed.

5 As to the meaning of 'advocacy services' see PARA 495 note 3.

6 As to the meaning of 'litigation services' see PARA 495 note 4.

7 The Administration of Justice Act 1985 s 32 is to have effect as if the references to conveyancing services included references to advocacy, litigation or probate services: Courts and Legal Services Act 1990 s 53(7), Sch 8 para 11. As from a day to be appointed Sch 8 para 11 is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 2 paras 33, 35(1), (9), Sch 23. At the date at which this volume states the law no such day had been appointed.

As to the meaning of 'probate services' see PARA 427 note 5. See also the Licensed Conveyancers' Probate Rules 2008 r 6. As to the rules see PARA 1336 note 3.

8 Administration of Justice Act 1985 s 32(1)(b). As from a day to be appointed s 32(1)(b) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (3) so that the Council may make rules prescribing the circumstances in which bodies may be recognised as being suitable to undertake the provision of

conveyancing services or other relevant legal services. As to 'relevant legal services' see PARA 1395 note 7. At the date at which this volume states the law no such day had been appointed.

9 Administration of Justice Act 1985 s 32(1)(c). As from a day to be appointed s 32(1)(c) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (5) so that the Council may make rules prescribing requirements which must be satisfied, rather than conditions. At the date at which this volume states the law no such day had been appointed.

10 Administration of Justice Act 1985 s 32(1)(d).

11 Administration of Justice Act 1985 s 32(1)(ba) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (4)). As to the meaning of 'reserved instrument activities' see PARA 512 note 5; as to the meaning of 'administration of oaths' see PARA 512 note 8.

12 In applications under the Administration of Justice Act 1985 s 32: s 32(3)(a).

13 Administration of Justice Act 1985 s 32(3)(a). As to the meaning of 'fees' see PARA 1324 note 3. As from a day to be appointed s 32(3)(a) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7) (a) so that the Council may also make provision with regard to the renewal of recognition. At the date at which this volume states the law no such day had been appointed.

14 Administration of Justice Act 1985 s 32(3)(b). See the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 (19 April 2000); and PARA 1396 et seq. For these purposes, 'recognised body' means a body corporate for the time being recognised under the Administration of Justice Act 1985 s 32: ss 32(2), 39(1). As from a day to be appointed s 32(2) is amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 20(1), (6) to remove the word 'corporate' from the above definition. At the date at which this volume states the law no such day had been appointed.

15 In under the Administration of Justice Act 1985 s 32; and subject to the provisions of Pt II (ss 11-39) (see PARAS 1319 et seq, 1402 et seq): s 32(3)(c) (as prospectively substituted: see note 16).

16 Administration of Justice Act 1985 s 32(3)(c). As from a day to be appointed s 32(3)(c) is substituted for s 32(3)(c), (ca), (cb) (see the text and notes 26-27) by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(c). At the date at which this volume states the law no such day had been appointed.

17 Administration of Justice Act 1985 s 32(3)(d). As from a day to be appointed s 32(3)(d) is repealed by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(d). At the date at which this volume states the law no such day had been appointed.

18 Administration of Justice Act 1985 s 32(3)(e). As from a day to be appointed s 32(3)(e) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(e) to allow the Council to make provision with regard to the keeping of a register containing such information as may be specified in the rules. In addition, as from that date the Administration of Justice Act 1985 s 32(3)(ea) is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(f) to empower the Council to make provision for information (or information of a specified description) on such a register to be made available to the public, and about the manner in which and times at which, information is to be made so available. At the date at which this volume states the law no such day had been appointed.

19 In rules made under any other provision of the Administration of Justice Act 1985 Pt II: s 32(3)(f).

20 Administration of Justice Act 1985 s 32(3)(f).

21 Administration of Justice Act 1985 s 32(3)(g). As from a day to be appointed s 32(3)(g) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(g) to include rules applicable to managers or employees of recognised bodies. At the date at which this volume states the law no such day had been appointed.

22 In under the Administration of Justice Act 1985 Pt II: s 32(3)(h).

23 Administration of Justice Act 1985 s 32(3)(h). As to the service of notices see PARA 1329 note 4.

24 Administration of Justice Act 1985 s 32(3)(aa) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(b)).

25 Administration of Justice Act 1985 s 32(3)(c) (s 32(3)(c) prospectively substituted, and s 32(3)(ca), (cb) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(c)). The recognition referred to in the text is recognition granted under the Administration of Justice Act 1985 s 32, which remains in force subject to the provisions of Pt II: s 32(3)(c) (as so prospectively substituted).

26 Administration of Justice Act 1985 s 32(3)(ca) (as prospectively added: see note 25).

27 Administration of Justice Act 1985 s 32(3)(cb) (as prospectively added: see note 25).

28 Administration of Justice Act 1985 s 32(3)(fa) (s 32(3)(fa), (fb) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (7)(g)).

29 The rules made under any other provision of the Administration of Justice Act 1985 Pt II: s 32(3)(fb) (as prospectively added: see note 28).

30 Administration of Justice Act 1985 s 32(3)(fb) (as prospectively added: see note 28).

31 Administration of Justice Act 1985 s 32(6)(a).

32 The in pursuance of the Administration of Justice Act 1985 s 32(3)(d) (see head (d) in the text): s 32(6)(b) (as prospectively substituted: see note 33).

33 Administration of Justice Act 1985 s 32(6)(b). As from a day to be appointed s 32(6)(b) is substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (10)(b) to refer to a certificate stating that a body's recognition under the Administration of Justice Act 1985 s 32 does not have effect subject to any conditions or has effect subject to particular conditions. At the date at which this volume states the law no such day had been appointed.

34 Administration of Justice Act 1985 s 32(6).

35 The notwithstanding the Solicitors Act 1974 s 24(2) (application of penal provisions to bodies corporate: see PARA 589) and if (1) at the time the act in question was done the body was a recognised body; and (2) it was done in the course of the provision of conveyancing or other professional services which the body was not precluded from undertaking to provide as a recognised body by any restrictions imposed in pursuance of the Administration of Justice Act 1985 s 32(3)(d): s 32(4)(a), (b) (as prospectively repealed: see note 38).

36 The Solicitors Act 1974 s 22(1): see PARA 595.

37 'Officer', in relation to a recognised body, includes a director, manager or secretary: Administration of Justice Act 1985 s 39(1). As from a day to be appointed this definition is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 28(b), Sch 23. At the date at which this volume states the law no such day had been appointed.

38 Administration of Justice Act 1985 s 32(4). Nor does the Solicitors Act 1974 s 22(1) apply to any officer or employee of a body corporate by reason of any act done by him if (1) the conditions specified in the Administration of Justice Act 1985 s 32(4)(a), (b) (as so prospectively repealed; see note 37) are satisfied in relation to that act; and (2) it was done by him at the direction and under the supervision of another person who was at the time an officer or employee of the body; and (3) it could have been done by that other person for or in expectation of any fee, gain or reward without committing an offence under the Solicitors Act 1974 s 22: Administration of Justice Act 1985 s 32(5).

As from a day to be appointed s 32(4), (5) is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 20(1), (9), Sch 23. At the date at which this volume states the law no such day had been appointed.

UPDATE

1392 Provision of conveyancing and other services by recognised bodies

NOTES--Day appointed in relation to amendments made by Legal Services Act 2007 is 31 March 2009: SI 2009/503.

NOTE 14--Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1393. Restrictions of conveyancing services and other business activities.

1393. Restrictions of conveyancing services and other business activities.

When granting recognition¹ of a recognised body² or during the currency of a certificate³, the Council for Licensed Conveyancers⁴ may impose restrictions on the kinds of conveyancing services⁵ that may be undertaken by a recognised body and may do so by reference to criteria of general application published by the Council in such form and in such manner as it may from time to time determine⁶. The objects clause in the memorandum⁷ of a recognised body must be restricted to the provision of conveyancing services and to the undertaking of such other things as are necessary or incidental or conducive to the attainment of the said object, and a recognised body must comply with any restriction imposed by the Council⁸ on the kinds of conveyancing services that it may undertake to provide as a recognised body⁹. A recognised body must not conduct any business other than that of conveyancing services¹⁰, and may only enter into partnership or into association with persons who are members of a profession or business which comprises or includes the provision of conveyancing services¹¹.

A recognised body must, at all times, be managed and controlled in accordance with the Council for Licensed Conveyancers' Recognised Bodies Rules 2000, provided that no breach of this rule occurs where the company secretary of a recognised body is not a qualified person¹² or recognised body¹³.

1 Ie under the Administration of Justice Act 1985 s 32: see PARA 1392.

2 'Recognised body' means a body corporate recognised by the Council under the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 as being a suitable body corporate to undertake the provision of conveyancing services: r 2.01.

3 'Certificate' means a certificate of recognition issued by the Council under the Administration of Justice Act 1985 s 32(6) (see PARA 1392): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01.

4 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

5 As to the meaning of 'conveyancing services' see PARA 1319 note 2; and the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01.

6 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 3.01.

7 For these purposes 'memorandum' has the meaning given by the Companies Act 1985 s 744 (see **COMPANIES** vol 14 (2009) PARA 104): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01.

8 Ie any restriction imposed under the Administration of Justice Act 1985 s 32(3)(d) (see PARA 1392): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 3.02.

9 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 3.02.

10 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 3.03.

11 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 3.04. See further r 3.05.

12 'Qualified person' means: (1) a licensed conveyancer who is entitled to act as a sole principal; or (2) a licensed conveyancer who holds, and has held for the three consecutive preceding years a limited licence; or (3) any other person or class of persons in respect of whom the Council gives express approval: Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01.

The Council may from time to time express approval of persons or classes of persons to enable them to become qualified persons for the purposes of these rules: r 18.05.

As to the meaning of 'licensed conveyancer' see PARA 1319 note 3; and r 2.02. As to the meaning of 'limited licence' see PARA 1327 note 10; and r 2.02.

13 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 3.06.

UPDATE

1393 Restrictions of conveyancing services and other business activities

TEXT AND NOTES--Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009 (for the purposes of which 'recognised body' means a body recognised by the Council for Licensed Conveyancers under the Administration of Justice Act 1985 s 32 to provide to the public conveyancing and other services regulated by the Council).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1394. Conditions for recognition.

1394. Conditions for recognition.

As from a day to be appointed the following provisions have effect¹. Rules made by the Council for Licensed Conveyancers² may provide for it to grant a body recognition³ subject to one or more conditions⁴. At any time while a body is so recognised, the Council may, in such circumstances as may be prescribed⁵, direct that the body's recognition is to have effect subject to such conditions as the Council may think fit⁶.

The conditions which may be imposed include:

- 2134 (1) conditions restricting the kinds of conveyancing services⁷ that may be provided by the body⁸;
- 2135 (2) conditions imposed by reference to criteria of general application⁹;
- 2136 (3) conditions requiring the body to take any specified steps that will, in the opinion of the Council, be conducive to the body carrying on an efficient business¹⁰;

and conditions may be imposed despite the fact that they may result in expenditure being incurred by the body¹¹.

On an application made by a recognised body¹², the Council may, in such circumstances as may be prescribed, direct the removal of a condition subject to which the body's recognition has effect, or the variation of such a condition in the manner described in the application¹³.

Rules so made may make provision about when conditions imposed take effect (including provision conferring power on the Council to direct that a condition is not to have effect until the conclusion of any appeal in relation to it)¹⁴, and may contain such incidental, supplemental, transitional or transitory provisions or savings as the Council considers necessary or expedient¹⁵.

At the date at which this volume states the law no such day had been appointed.

1 As from a day to be appointed the Administration of Justice Act 1985 s 32(3A)-(3G) is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 20(1), (8). At the date at which this volume states the law no such day had been appointed.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 I.e. a grant of recognition under the Administration of Justice Act 1985 s 32 (see PARA 1392): s 32(3A) (as prospectively added: see note 1).

4 Administration of Justice Act 1985 s 32(3A) (as prospectively added: see note 1).

5 'Prescribed' means prescribed by rules made by the Council: s 32(3B), (3E)(b) (as prospectively added: see note 1).

6 Administration of Justice Act 1985 s 32(3B) (as prospectively added: see note 1).

7 As to the meaning of 'conveyancing services' see PARA 1319 note 2.

8 Administration of Justice Act 1985 s 32(3C)(a) (as prospectively added: see note 1).

9 Administration of Justice Act 1985 s 32(3C)(b) (as prospectively added: see note 1).

- 10 Administration of Justice Act 1985 s 32(3C)(c) (as prospectively added: see note 1).
- 11 Administration of Justice Act 1985 s 32(3C) (as prospectively added: see note 1).
- 12 As to the meaning of 'recognised body' see PARA 1392 note 14.
- 13 Administration of Justice Act 1985 s 32(3D) (as prospectively added: see note 1). Section 14 (see PARA 1327) applies in relation to an application under s 32(3D) as it applies in relation to an application for a licence under Pt II: s 32(3E)(a) (as so prospectively added).
- 14 Administration of Justice Act 1985 s 32(3F) (as prospectively added: see note 1).
- 15 Administration of Justice Act 1985 s 32(3G) (as prospectively added: see note 1).

UPDATE

1394-1395 Conditions for recognition, Conveyancing services bodies

These provisions have effect as from 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1395. Conveyancing services bodies.

1395. Conveyancing services bodies.

As from a day to be appointed the following provisions have effect¹. A 'conveyancing services body' means a body (corporate or unincorporate) in respect of which the management and control condition, and the services condition are satisfied².

The management and control condition is satisfied:

- 2137 (1) in the case of a partnership if at least one of the partners is a licensed conveyancer³;
- 2138 (2) in the case of an unincorporated body (other than a partnership), or a body corporate which is managed by its members, if at least one of those members is a licensed conveyancer⁴;
- 2139 (3) in the case of any other body corporate if at least one director of the body is a licensed conveyancer⁵.

The services condition is satisfied in respect of a body if the body is carrying on a business consisting of the provision of conveyancing services⁶, or conveyancing services and other relevant legal services⁷.

At the date at which this volume states the law no such day had been appointed.

1 As from a day to be appointed the Administration of Justice Act 1985 s 32A is added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 21. At the date at which this volume states the law no such day had been appointed.

2 Administration of Justice Act 1985 s 32A(1) (as prospectively added: see note 1).

3 Administration of Justice Act 1985 s 32A(2) (as prospectively added: see note 1). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

4 Administration of Justice Act 1985 s 32A(3) (as prospectively added: see note 1).

5 Administration of Justice Act 1985 s 32A(4) (as prospectively added: see note 1).

6 As to the meaning of 'conveyancing services' see PARA 1319 note 2.

7 Administration of Justice Act 1985 s 32A(5) (as prospectively added: see note 1). 'Relevant legal services', in relation to a body, means: (1) conveyancing services; and (2) where authorised persons are managers or employees of, or have an interest in, the body, services such as are provided by individuals practising as such authorised persons (whether or not those services involve the carrying on of reserved legal activities within the meaning of the Legal Services Act 2007 (see s 12, Sch 2; and PARA 512)); and a person has an interest in a body if the person has an interest in the body within the meaning of the Legal Services Act 2007 Pt 5 (see ss 72, 109; and PARAS 1476-1477); Administration of Justice Act 1985 s 32A(6) (as so prospectively added). 'Authorised person' means an authorised person in relation to an activity which is a reserved legal activity (within the meaning of the Legal Services Act 2007): Administration of Justice Act 1985 s 32A(6) (as so prospectively added).

UPDATE

1394-1395 Conditions for recognition, Conveyancing services bodies

These provisions have effect as from 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1396. Eligibility for recognition.

1396. Eligibility for recognition.

A recognised body¹ must:

- 2140 (1) at all material times comply with the Council for Licensed Conveyancers' Recognised Bodies Rules 2000²; and
- 2141 (2) be registered in England and Wales³ as a company limited by shares⁴.

The registered office of the recognised body must be in England or Wales and at the place of business or one of the places of business of the company⁵. Not less than half of the directors of a recognised body must at all times be qualified persons⁶ and one of their number who is a qualified person must be appointed chairman⁷.

A company is not eligible to become or remain a recognised body unless its articles satisfy the provisions set out in the Council for Licensed Conveyancers' Recognised Bodies Rules 2000⁸. Nor is a company eligible to become or remain a recognised body unless there has been full compliance with the rule relating to compensation fund covenants⁹.

A recognised body must also deliver to the Council an annual financial statement and auditor's report¹⁰.

1 As to the meaning of 'recognised body' see PARA 1393 note 2.

2 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 4.01. A recognised body must also comply fully with the provisions of the Council's rules providing for: (1) the keeping of the accounts of a recognised body and the holding of clients' money (ie the Council for Licensed Conveyancers' Accounts Rules 2008: see PARA 1353 et seq); (2) the conduct, practice and discipline of recognised bodies (ie the Licensed Conveyancers' Conduct Rules 2005; and PARA 1342 et seq): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 14.01. A recognised body must ensure compliance with these rules by the provisions of the articles of the company: r 14.02.

The Council may, at any time, take such steps as it considers necessary or expedient to ascertain whether or not a recognised body is in compliance with these rules: r 18.06.

For these purposes 'articles' has the meaning given by the Companies Act 1985 s 744 (see **COMPANIES** vol 14 (2009) PARA 228); and 'company' has the meaning given by the Companies Act 1985 s 735(1) (see **COMPANIES** vol 14 (2009) PARAS 1, 24): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01.

3 be registered under the Companies Act 1985: see **COMPANIES** vol 14 (2009) PARA 24 et seq.

4 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 4.02. There is no restriction upon the number and classes of shares issued by a recognised body: r 16.01. A member of a recognised body must disclose to that body the nature and extent of any interests in shares in that recognised body registered in his name and the persons by whom such interests are held, and the recognised body must maintain a record, to be kept for at least six years from the date on which a person ceased to hold any interest in any shares in the recognised body in respect of each person on it, of the identity of all persons, other than the member in whose name a share is registered, holding such interest: r 16.02. A member of a recognised body must not create any charge or other third party interest over any share in the recognised body: see r 16.03.

5 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 4.03. Any notice or other document authorised or required to be served on a recognised body under the provisions of the Administration of Justice Act 1985 and these rules may be served by posting to its registered office: Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 18.07.

6 As to the meaning of 'qualified person' see PARA 1393 note 12.

7 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 4.04. Provision is also made with regard to the mental health of directors: see r 17.

8 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 4.05. This includes the provisions set out in the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 Sch 1.

9 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 4.06. Each member of a recognised body and each director must, within seven days of becoming a member, or director, submit to the Council a covenant by deed, confirming that he or it will, jointly and severally with the other members of and beneficial owners of any shares in the recognised body and each director will jointly and severally with the other directors, reimburse the Council when required to do so by the Council in respect of any grant made out of the Compensation Fund under the Administration of Justice Act 1985 s 21 (see PARA 1348) where:

606 (1) such grant is made in consequence of negligence or of fraud or other dishonesty of the recognised body or its directors, employees or associates of theirs whether past or present or any failure on their part to account for money or securities received by them; and

607 (2) at the time of such act or default the covenantor is or was a member of the recognised body or a director thereof;

provided that a member or director must only be required to reimburse the Council to the extent that the Council has been unable to recover the amount of the grant from the recognised body or the officer or employee committing the act or default or the personal representative, trustee in bankruptcy or liquidator of any such person: Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 15.01.

Such a deed must include a covenant by the covenantor that before transferring any share or holding any share as nominee he or it will ensure that the intended transferee provides a similar deed to the Council: r 15.02. A recognised body must not enter in its register of members or directors any person until that person has executed such a deed, and must, so far as is practicable, ensure that all such covenants are submitted to the Council in accordance with r 15.01 above: r 15.03. Specimen deeds are provided: see r 15.04, and Sch 2.

'Member' means a shareholder: Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01.

10 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 18.04.

UPDATE

1396-1401 Eligibility for recognition ... Rules applying to recognised bodies

Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1397. General grounds for refusal, and automatic cessation, of recognition.

1397. General grounds for refusal, and automatic cessation, of recognition.

The Council for Licensed Conveyancers¹ may refuse to recognise² a company³ or refuse to continue to recognise a recognised body⁴ if it is not satisfied that it is eligible⁵ for recognition and if:

- 2142 (1) the company has at any time had made against it one or more relevant orders⁶, or an order of the High Court⁷;
- 2143 (2) any officer⁸, employee or shareholder who is or was a licensed conveyancer⁹ has had a relevant order made against him¹⁰;
- 2144 (3) any officer¹¹, employee or shareholder has been convicted of a criminal offence involving fraud, dishonesty, deception or violence or some other serious arrestable offence¹² or has been committed to prison in civil proceedings¹³;
- 2145 (4) any officer¹⁴ or employee:
 - 39 32. (a) has been in breach of any statutory requirements regarding the payment of tax or the payment for a licence¹⁵;
 - 33. (b) has failed to meet a civil judgment within the time required under the same¹⁶;
 - 34. (c) has made a composition or arrangement with creditors¹⁷;
 - 35. (d) has been the subject of an order appointing a receiver or an administrator over his property¹⁸;
 - 36. (e) has been an officer of a company which has gone into liquidation on the grounds of insolvency¹⁹;
 - 37. (f) has been the subject of an order disqualifying him from holding office as a director²⁰;
 - 38. (g) is or has been an officer or an employee of another recognised body which has had an order made against²¹;
 - 39. (h) has been found guilty of professional misconduct as a member of another profession²²;
 - 40. (i) is by reason of any mental illness unable to carry out his functions as an officer or employee of the company²³;
- 40 2146 (5) the applicant fails to pay the required fee²⁴;
- 2147 (6) the applicant fails to submit to the Council a deed of covenant²⁵ executed by all directors of the recognised body, all members²⁶ of the recognised body and each beneficial owner of a share in the recognised body or proposed recognised body or to provide evidence of compliance with the rules relating to the compensation fund²⁷;
- 2148 (7) the applicant fails to submit to the Council the audited annual financial statements of the company²⁸.

The recognition of a recognised body automatically ceases where a winding-up order or an administration order²⁹ is made in respect of the recognised body, where a resolution for voluntary winding-up is passed by the recognised body, or where a person is appointed administrative receiver of the body³⁰.

- 1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.
- 2 Ie under the Administration of Justice Act 1985 s 32: see PARA 1392.
- 3 As to the meaning of 'company' see PARA 1396 note 2.
- 4 As to the meaning of 'recognised body' see PARA 1393 note 2.
- 5 Ie under the provisions of the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 4: see PARA 1396.
- 6 Ie orders made under the Administration of Justice Act 1985 Sch 6 para 4(2)(b), (c) (see PARA 1403): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(a)(i).
- 7 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(a). The order of the High Court referred to is one made under the Administration of Justice Act 1985 Sch 6 para 6(1) (see PARA 1403): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(a)(ii).
- 8 As to the meaning of 'officer' see PARA 1392 note 37 (definition applied by Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01).
- 9 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3 (definition applied by Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01).
- 10 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(b). A relevant order is one made under the Administration of Justice Act 1985 s 26(2), (7) (see PARA 1378): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(b).
- 11 Every officer of the recognised body is responsible for notifying the Council of any circumstance as is referred to in the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01 (c), (d) (see the text and notes 14-23) within 14 days of the occurrence: r 6.01.
- 12 The Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(c) refers to a serious arrestable offence as defined by the Police and Criminal Evidence Act 1984 (repealed).
- 13 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(c).
- 14 See note 11.
- 15 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(i).
- 16 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(ii).
- 17 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(iii).
- 18 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(iv).
- 19 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(v).
- 20 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(vi).
- 21 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(vii). A relevant order means one made under the Administration of Justice Act 1985 Sch 6 para 4(2)-7(1): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(vii).
- 22 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(viii).
- 23 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(ix). The rules also refer to the Mental Health Act 1983 Pt VII (repealed): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(d)(x).
- 24 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(f). The required fee is prescribed by r 7.04(a) (see PARA 1398): r 5.01(f).
- 25 Ie a deed of covenant under the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 15.01 (see PARA 1396 note 9): r 5.01(g).

26 As to the meaning of 'member' see PARA 1396 note 9.

27 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(g). The rules relating to the compensation fund are the Council for Licensed Conveyancers Compensation Fund Rules 2008 (see PARAS 1350-1352).

28 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 5.01(h). The audited annual financial statements of the company are required under r 7.04 (see PARA 1398); r 5.01(h).

29 In a winding-up order or an administration order under the Insolvency Act 1986 (see **COMPANY AND PARTNERSHIP INSOLVENCY**): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 11.01.

30 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 11.01.

UPDATE

1396-1401 Eligibility for recognition ... Rules applying to recognised bodies

Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1398. Application for certificate of recognition and fees.

1398. Application for certificate of recognition and fees.

Any company¹ which seeks to become or remain a recognised body² must apply for a certificate of recognition³. Every applicant for a certificate must deliver to the principal office of the Council for licensed Conveyancers⁴, either by post or by its agent⁵:

- 2149 (1) a written application in such form as the Council may from time to time determine which has been correctly completed without amendment and signed by the chairman of the body corporate who must be a qualified person⁶ and by the company secretary and where an individual acts in more than one capacity he must append his signature in each capacity⁷;
- 2150 (2) a copy of its memorandum and articles⁸ together with a declaration that they comply with the Council for Licensed Conveyancers' Recognised Bodies Rules 2000⁹;
- 2151 (3) its certificate of incorporation¹⁰;
- 2152 (4) executed and duly stamped with the appropriate stamp duty deeds of covenant¹¹ for retention by the Council¹².

However, where a company is applying solely for a second or subsequent certificate where its current certificate is due to expire, the chairman of the company or some other officer¹³ acceptable to the Council must deliver to the principal office of the Council at least 21 days before the expiry of the current certificate¹⁴:

- 2153 (a) a statement and an application in the forms from time to time determined by the Council¹⁵; and
- 2154 (b) a declaration that memorandum and articles of the company continue to comply with the Council for Licensed Conveyancers' Recognised Bodies Rules 2000¹⁶; and
- 2155 (c) a copy of the register of directors and shareholders of the company¹⁷.

Whenever an application for a certificate is delivered there must at the same time be delivered to the principal office of the Council:

- 2156 (i) the fee payable in respect of the application¹⁸;
- 2157 (ii) evidence of current compliance with the Indemnity Rules¹⁹;
- 2158 (iii) the annual financial statement of the company and an auditor's report thereon which must be appropriately prepared and signed²⁰, and any certificate or other documentation relating to the accounts of the recognised body which the Council may require²¹;
- 2159 (iv) any contribution which the Council may require towards its compensation fund²².

1 As to the meaning of 'company' see PARA 1396 note 2.

2 As to the meaning of 'recognised body' see PARA 1393 note 2.

- 3 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.01. As to the meaning of 'certificate' see PARA 1393 note 7.
- 4 As to the Council for Licensed Conveyancers see PARA 1320 et seq.
- 5 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.02.
- 6 As to the meaning of 'qualified person' see PARA 1393 note 12.
- 7 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.02(a).
- 8 As to the meaning of 'memorandum' see PARA 1393 note 7; and as to the meaning of 'articles' see PARA 1396 note 2.
- 9 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.02(b).
- 10 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.02(c).
- 11 le pursuant to the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 15.01: r 7.02(d).
- 12 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.02(d).
- 13 As to the meaning of 'officer' see PARA 1392 note 37.
- 14 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.03.
- 15 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.03(a).
- 16 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.03(b).
- 17 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.03(c).
- 18 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.04(a). The fee payable is that prescribed in the Council for Licensed Conveyancers Fees Rules 2003.
- 19 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.04(b). 'Indemnity Rules' means rules made under the Administration of Justice Act 1985 s 21 (see PARA 1348): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.01.
- 20 le in accordance with the Companies Act 1985 ss 235, 236 (see **COMPANIES** vol 15 (2009) PARAS 924 et seq, 935): Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.04(c).
- 21 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.04(c).
- 22 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 7.04(d). As to the compensation fund see PARA 1350.

UPDATE

1396-1401 Eligibility for recognition ... Rules applying to recognised bodies

Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009.

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1399. Issue, refusal and duration of certificate of recognition.

Where the Council for Licensed Conveyancers¹ grants recognition² it may issue to the applicant a certificate³ free of restrictions, or a certificate which imposes such restrictions as the Council thinks fit on the kinds of conveyancing services⁴ that the company⁵ may undertake to provide as a recognised body⁶. Every certificate may be sent by the Council by post to the applicant at its registered address or to such other address as may be specified in writing by the recognised body to the Council⁷.

In any case where the Council decides to refuse an application for recognition, it must notify the applicant of that refusal and of the grounds on which the application has been refused⁸. Where an application for a certificate has been made⁹ and the Council has within 42 days beginning with the date when the application was received neither issued a certificate in pursuance of the application nor refused it then the application is deemed to have been so refused and the applicant is deemed to have been notified of the refusal at the end of that period¹⁰.

A certificate is in force for the period of 12 months beginning with the date of its issue, or such other period as may be specified in the certificate of recognition¹¹. If an application for a certificate is made¹² and at the date of the application the recognised body already holds a current certificate but no new certificate is issued to it in pursuance of the application before the time when its existing certificate would, apart from this rule, expire in accordance with the foregoing provisions the existing certificate does not expire at that time but continues in force until a new certificate is issued to it, or, if the application is refused by the Council or is deemed to have been so refused until the end of the period within which an appeal may be brought against the refusal¹³.

When an applicant for a certificate has held such a certificate at any time within the period of 12 months ending with the date of its application, any certificate granted to it in pursuance of the application is, unless the Council directs otherwise, deemed to have been issued on the date following the date when its previous certificate expired¹⁴ and accordingly to have been held by it as from that day¹⁵.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 I.e. under the Administration of Justice Act 1985 s 32: see PARA 1392.

3 As to the meaning of 'certificate' see PARA 1393 note 3.

4 As to the meaning of 'conveyancing services' see PARA 1319 note 2; and the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 2.02.

5 As to the meaning of 'company' see PARA 1396 note 2.

6 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 8.01. A certificate of recognition remains the property of the Council and is in such form as the Council may prescribe from time to time, and if the Council imposes restrictions relating to a certificate it must be indorsed with particulars of these restrictions: r 8.02. Where restrictions are imposed by the Council during the currency of a certificate, the recognised body must immediately upon request, submit its certificate to the Council for indorsement: r 8.03. As to the meaning of 'recognised body' see PARA 1393 note 2.

7 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 8.04.

- 8 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 9.01.
- 9 le in accordance with the Council for Licensed Conveyancers' Recognised Bodies Rules 2000: r 9.02.
- 10 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 9.02.
- 11 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 10.01. This provision is expressed as being subject to the provisions of the Administration of Justice Act 1985, and the Council for Licensed Conveyancers' Recognised Bodies Rules 2000.
- 12 le in accordance with the Council for Licensed Conveyancers' Recognised Bodies Rules 2000: r 10.02.
- 13 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 10.02. Such an appeal is brought under the Administration of Justice Act 1985 Sch 6 para 8(1) (see PARA 1405). If such an appeal is brought, the certificate continues in force until the appeal is determined or abandoned: Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 10.02(c).
- 14 le expired in accordance with the Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 10.01 (see text and note 11), or would have so expired but for r 10.02 (see the text and notes 12-13): r 10.03.
- 15 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 10.03.

UPDATE

1396-1401 Eligibility for recognition ... Rules applying to recognised bodies

Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1400. The list of recognised bodies and the duty to notify the Council for Licensed Conveyancers of corporate changes.

1400. The list of recognised bodies and the duty to notify the Council for Licensed Conveyancers of corporate changes.

The Council for Licensed Conveyancers¹ must establish and maintain, in such form as it may determine, a list containing the names and principal places of business of all recognised bodies² for the time being recognised³ by the Council⁴. Information in the list must be available for inspection in a legible form by any person during normal office hours at the principal office of the Council, without payment⁵.

A recognised body must notify the Council in writing of any change of its designated registered office address⁶, or its principal and other place or places of business not less than 28 days before the change is implemented⁷. A recognised body must notify the Council in writing of any change in the body's members⁸ or directors, and with respect to the interests held in any share in the body by a person other than the member in whose name the share is registered, the identity of the person by whom any such interest is held, within seven days, beginning with the date on which any change takes place⁹.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 As to the meaning of 'recognised body' see PARA 1393 note 2.

3 Ie under the Administration of Justice Act 1985 s 32: see PARA 1392.

4 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 12.01.

5 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 12.02.

6 Ie under the Companies Act 1985 s 287 (see **COMPANIES** vol 14 (2009) PARA 129): r 13.01(a).

7 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 13.01.

8 As to the meaning of 'member' see PARA 1396 note 9.

9 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 13.02.

UPDATE

1396-1401 Eligibility for recognition ... Rules applying to recognised bodies

Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1401. Rules applying to recognised bodies.

1401. Rules applying to recognised bodies.

A recognised body¹ must comply fully with the provisions of the rules made by the Council for Licensed Conveyancers² providing for (1) the keeping of the accounts of a recognised body and the holding of clients' money³; and (2) the conduct, practice and discipline of recognised bodies⁴. A recognised body must ensure compliance with such rules by the provisions of the articles of the company⁵.

1 As to the meaning of 'recognised body' for these purposes see PARA 1393 note 2.

2 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

3 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 14.01(a). See the Council for Licensed Conveyancers' Accounts Rules 2008; and PARA 1353 et seq.

4 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 14.01(b). See the Licensed Conveyancers' Conduct Rules 2005; and PARA 1342 et seq.

5 Council for Licensed Conveyancers' Recognised Bodies Rules 2000 r 14.02.

UPDATE

1396-1401 Eligibility for recognition ... Rules applying to recognised bodies

Council for Licensed Conveyancers' Recognised Bodies Rules 2000 replaced by Council for Licensed Conveyancers' Regulation of Practices (Recognised Bodies) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1402. Disciplinary control of recognised bodies.

1402. Disciplinary control of recognised bodies.

The following additional functions¹ are conferred on the Investigating Committee² and the Discipline and Appeals Committee³.

The Investigating Committee must carry out a preliminary investigation of any case in which (1) it is alleged that a recognised body⁴ has been convicted (while a recognised body) by any court in the United Kingdom⁵ of a criminal offence which renders it unsuitable to be recognised⁶ or has failed to comply with any rules⁷ applicable to it⁸; or (2) a complaint is made to the Council for Licensed Conveyancers⁹ by or on behalf of a member of the public about a recognised body¹⁰. This investigation is made with a view to determining whether the case ought to be referred to the Discipline and Appeals Committee for hearing and determination¹¹ by that committee¹². As from a day to be appointed the Investigating Committee must also carry out a preliminary investigation of any case in which (a) it is alleged that a manager or employee of a recognised body who is not a licensed conveyancer has failed to comply with any rules¹³ applicable to him¹⁴; or (b) it is alleged that a recognised body (while a recognised body) has failed to comply with a condition subject to which its recognition has effect¹⁵.

After making such an investigation, the Investigating Committee may hear and determine the allegation¹⁶, or refer it to the Discipline and Appeals Committee for hearing and determination¹⁷ by that committee¹⁸. The Council must make rules as to the cases in which the Investigating Committee may hear and determine an allegation, and the cases in which they must refer an allegation to the Discipline and Appeals Committee¹⁹. At the date at which this volume states the law no such day had been appointed in either case.

1 The functions in addition to those conferred by the Administration of Justice Act 1985 ss 24, 25, and as from a day to be appointed s 24A: see PARAS 1359-1362. As to the meaning of 'functions' see PARA 1322 note 2.

2 As to the Investigating Committee see PARA 1359 et seq.

3 Administration of Justice Act 1985 s 32(7), Sch 6 para 2 (prospectively amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (3)). As to the Discipline and Appeals Committee see PARA 1362; and as to the procedure in disciplinary cases see the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001; and PARA 1367 et seq. As to the statutory instrument containing those rules see PARA 1365 note 12.

4 For these purposes, and subject to the Administration of Justice Act 1985 Sch 6 para 1(2), 'recognised body' means a body corporate for the time being recognised under s 32 (see PARA 610): Sch 6 para 1(1). In relation to any such allegation of failure to comply with the rules as is mentioned in Sch 6 para 3(1)(a)(ii) (see head (1) in the text) or any such complaint as is mentioned in Sch 6 para 3(1)(b) (see head (2) in the text), 'recognised body' means a body corporate that was recognised under s 32 at the time when the conduct to which the allegation or complaint relates took place: Sch 6 para 1(2). As from a day to be appointed Sch 6 para 1 is amended by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 32(1), (2), Sch 23 to remove the word 'corporate' wherever it appears, and also the references to the Administration of Justice Act 1985 Sch 6 para 3(1)(b) and 'a complaint'. At the date at which this volume states the law no such day had been appointed.

5 As to the meaning of 'United Kingdom' see PARA 1063 note 13.

6 The under the Administration of Justice Act 1985 s 32: Sch 6 para 3(1)(a)(i). As from a day to be appointed Sch 6 para 3(1)(a)(i) is amended by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 32(1), (4)(a), Sch 23 to remove the reference to a court in the United Kingdom. At the date at which this volume states the law no such day had been appointed.

7 The rules applicable to it by virtue of the Administration of Justice Act 1985 s 32: Sch 6 para 3(1)(a)(ii).

8 Administration of Justice Act 1985 Sch 6 para 3(1)(a)(i), (ii).

9 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

10 Administration of Justice Act 1985 Sch 6 para 3(1)(b). For these purposes, a complaint about a person who at the time when the conduct to which the complaint relates took place was an officer or employee of a recognised body is treated as a complaint about the body: Sch 3 para 3(2). As to the meaning of 'officer' see PARA 1392 note 28.

As from a day to be appointed Sch 6 para 3(1)(b) is repealed by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 32(1), (4)(c)(i), Sch 23. At the date at which this volume states the law no such day had been appointed.

11 Ie under the Administration of Justice Act 1985 Sch 6 para 4: see PARA 1403.

12 Administration of Justice Act 1985 Sch 6 para 3(1). As from a day to be appointed Sch 6 para 3(1) is amended by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 32(1), (4)(c)(ii), Sch 23 so as to repeal this provision. At the date at which this volume states the law no such day had been appointed.

A reference in the form of an allegation or complaint by the Investigating Committee to the Discipline and Appeals Committee under the Administration of Justice Act 1985 Sch 6 para 3 must be made in writing, specify the statutory provision under which it is made, and set out the allegation or complaint and a summary of the facts relied on to support it: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 3(1). A copy of such a reference or complaint must be served on the respondent, together with a copy of the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001, and a copy lodged with the chairman of the committee, within 14 days of the making of the reference or the decision to make the complaint: r 3(2). As to the statutory instrument containing those rules see PARA 1365 note 12. As to the Council for Licensed Conveyancers see PARA 1320 et seq. As to the procedure which then pertains see PARA 1367 et seq. As to the meaning of 'respondent' see PARA 1367 note 8.

13 Ie rules applicable by virtue of the Administration of Justice Act 1985 s 32 (see PARA 1392): Sch 6 para 3(1)(aa) (as prospectively added: see note 14).

14 Administration of Justice Act 1985 Sch 6 para 3(1)(aa) (Sch 6 para 3(1)(aa), (ab) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (4)(b)).

15 Administration of Justice Act 1985 Sch 6 para 3(1)(ab) (as prospectively added: see note 14).

16 Administration of Justice Act 1985 Sch 6 para 3(1A)(a) (Sch 6 para 3(1A), (1B) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (4)(d)).

17 Ie under the Administration of Justice Act 1985 Sch 6 para 4: see PARA 1403.

18 Administration of Justice Act 1985 Sch 6 para 3(1A)(b) (as prospectively added: see note 16).

19 Administration of Justice Act 1985 Sch 6 para 3(1B)(ab) (as prospectively added: see note 16).

UPDATE

1402 Disciplinary control of recognised bodies

TEXT AND NOTES--Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1403. Hearing and determination of allegations.

1403. Hearing and determination of allegations.

Where on the hearing of any allegation the Discipline and Appeals Committee¹ is satisfied that a recognised body (1) has been convicted of a criminal offence²; (2) has failed to comply with any rules³ applicable to it; or, as from a day to be appointed, (3) has failed to comply with a required condition⁴, the committee may, if it thinks fit, make one or more of the specified⁵ orders⁶. A body corporate in respect of which such an order is made may appeal to the High Court, and on any such appeal the court may make such order as it thinks fit⁷.

Where it appears to the Council for Licensed Conveyancers⁸ that the professional services provided by a recognised body in connection with any matter in which it has been instructed by a client⁹ have, in any respect, not been of the quality which it is reasonable to expect of that body, the Council may take any such step with respect to that recognised body as it could take¹⁰ with respect to a licensed conveyancer in similar circumstances¹¹.

As from a day to be appointed, where, on the hearing of any allegation that a manager or employee has failed to comply with the applicable rules¹², the committee is satisfied that a manager or employee has so failed to comply with those rules, it may, if it thinks fit, make one or more of the following orders¹³:

- 2160 (a) an order directing the payment by the manager or employee of a penalty not exceeding such amount as may be prescribed by rules made by the Council for these purposes¹⁴;
- 2161 (b) an order requiring the Council to consider taking such steps as the committee may specify in relation to the manager or employee¹⁵;
- 2162 (c) an order requiring the Council to refer to an appropriate regulator¹⁶ any matter relating to the conduct of the manager or employee¹⁷.

In relation to such proceedings, the committee may make such order as it considers fit as to the payment of costs by the Council, the recognised body or manager or employee against whom the proceedings were brought, or, if the person on whose allegation the proceedings were brought was heard (in person, or through a representative) by the committee in the course of the proceedings, that person¹⁸.

At the date at which this volume states the law no such day had been appointed.

Where (i) an order is made¹⁹ by the committee in the case of a director²⁰ of a recognised body; or (ii) any such order is made in the case of a person employed by a recognised body and the act or omission constituting the ground on which the order was made was instigated or connived at by a director of the recognised body or, if an act or omission was a continuing act or omission, a director of the body had or reasonably ought to have had knowledge of its continuance, the committee may, if it thinks fit, by order revoke the recognition²¹ of that body²². A body corporate in respect of which such an order is made may appeal to the High Court, and on any such appeal the court may make such order as it thinks fit²³.

As from a day to be appointed, where, on hearing an allegation²⁴, the Investigating Committee²⁵ is satisfied that a recognised body, manager or employee has failed to comply with any applicable rules²⁶ or that a recognised body has failed to comply with any relevant condition²⁷, the Investigating Committee may make an order directing the payment by the recognised body, manager or employee of a penalty to be forfeited to Her Majesty²⁸.

In relation to such proceedings the Investigating Committee may make such order as it considers fit as to the payment of costs by the Council, the recognised body, manager or employee against whom the proceedings were brought, or, if the person on whose allegation the proceedings were brought was heard (in person, or through a representative) by the Investigating Committee in the course of the proceedings, that person²⁹.

At the date at which this volume states the law no such day had been appointed.

1 As to the Discipline and Appeals Committee see PARA 1362.

2 Ie convicted as mentioned in the Administration of Justice Act 1985 Sch 6 para 3(1)(a)(i) (see PARA 1402): Sch 6 para 4(1)(a).

3 Ie such rules as are mentioned in the Administration of Justice Act 1985 Sch 6 para 3(1)(a)(ii) (see PARA 1402): Sch 6 para 4(1)(b).

4 Ie such condition as is mentioned in the Administration of Justice Act 1985 Sch 6 para 3(1)(ab) (see PARA 1402): Sch 6 para 4(1)(c) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (6)(b)).

5 Ie the orders referred to in the Administration of Justice Act 1985 Sch 6 para 4(2): Sch 6 para 4(1). Those orders are (1) an order revoking the recognition under s 32 of the body to which the allegation relates; (2) an order directing the payment by that body of a penalty not exceeding £3,000 to be forfeited to Her Majesty; (3) an order requiring that body to pay the costs incurred in bringing against it the proceedings before the committee or a contribution towards those costs of such amount as the committee considers reasonable: Sch 6 para 4(2). Section 26(5), (6) (power to amend the specified sum: see PARA 598) has effect in relation to the sum specified in Sch 6 para 4(2)(b) as it has effect in relation to the sum specified in s 26(2)(e): Sch 6 para 4(4).

As from a day to be appointed Sch 6 para 4(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (6)(b)-(e) to replace the sum in head (2) with such amount as may be prescribed by rules made by the Council, to repeal head (3), and to add an order reprimanding the body to which the allegation relates, and an order that the recognition of such a body under the Administration of Justice Act 1985 s 32 is to have effect subject to such conditions as may be specified in the order; and Sch 6 para 4(4) is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 32(1), (4)(c)(ii), Sch 23. At the date at which this volume states the law no such day had been appointed.

6 Administration of Justice Act 1985 Sch 6 para 4(1). Section 30, Sch 4 paras 1(2), 2, 3 (see PARAS 1365, 1375-1376) have effect in relation to proceedings under Sch 6 para 4 or Sch 6 para 5 as they have effect in relation to proceedings under s 26; and Sch 4 para 4 (see PARA 1378) applies to orders made by the committee under Sch 6: Sch 6 para 9(1), (2).

As from a day to be appointed Sch 6 para 9 is amended by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 32(1), (11), Sch 23 to remove the reference to the Administration of Justice Act 1985 Sch 6 para 3, to add a reference to proceedings under Sch 6 para 3A, and to repeal Sch 6 para 9(2). At the date at which this volume states the law no such day had been appointed.

7 Administration of Justice Act 1985 Sch 6 para 6(1). The decision of the High Court on such an appeal is final: Sch 6 para 6(2). As from a day to be appointed Sch 6 para 6(1) is amended by the Legal Services Act 2007 s 182, Sch 17 paras 1, 32(1), (8)(a)(i) to replace the reference to a body corporate with a reference to a person. At the date at which this volume states the law no such day had been appointed.

8 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

9 As to the meaning of 'client' see PARA 1353 note 5.

10 Ie under the Courts and Legal Services Act 1990 s 53(7), Sch 8 paras 14-20: see PARA 1383. Schedule 8 paras 14-20 have effect, with the necessary modifications, with respect to any steps taken against the recognised body under this provision as they have effect with respect to any steps taken with respect to a licensed conveyancer under Sch 8 para 14: Administration of Justice Act 1985 Sch 6 para 4(3A) (added by the Courts and Legal Services Act 1990 s 125(3), Sch 18 para 58). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 4(3A) is repealed by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 32(1), (6)(g), Sch 23. At the date at which this volume states the law no such day had been appointed.

11 Administration of Justice Act 1985 Sch 6 para 4(3) (substituted by the Courts and Legal Services Act 1990 Sch 18 para 58). As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 4(3) is repealed by the Legal Services Act 2007 s 182, 210, Sch 17 Pt 1 paras 1, 32(1), (6) (g), Sch 23. At the date at which this volume states the law no such day had been appointed.

12 Ie any allegation within the Administration of Justice Act 1985 Sch 6 para 3(1)(aa) (see PARA 1402).

13 Administration of Justice Act 1985 Sch 6 para 4(2A) (Sch 6 para 4(2A)-(2E) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (6)(f)).

14 Administration of Justice Act 1985 Sch 6 para 4(2B)(a) (as prospectively added: see note 13).

15 Administration of Justice Act 1985 Sch 6 para 4(2B)(b) (as prospectively added: see note 13).

16 An 'appropriate regulator' in relation to a manager or employee means: (1) if the person is an authorised person in relation to a reserved legal activity for the purposes of the Legal Services Act 2007 (see PARA 512), any relevant approved regulator (within the meaning of that Act: see PARA 358) in relation to that person; and (2) if the person carries on activities which are not reserved legal activities, any person who exercises regulatory functions in relation to the carrying on of such activities by the person: Administration of Justice Act 1985 Sch 6 para 4(2C) (as prospectively added: see note 13).

17 Administration of Justice Act 1985 Sch 6 para 4(2B)(c) (as prospectively added: see note 13).

18 Administration of Justice Act 1985 Sch 6 para 4(2D) (as prospectively added: see note 13). For the purposes of the Council or the recognised body, manager or employee against whom proceedings were brought, the reference to costs includes costs incurred in connection with a preliminary investigation of the allegation under Sch 6 para 3 (see PARA 1402): Sch 6 para 4(2E) (as so prospectively added).

19 Ie under the Administration of Justice Act 1985 s 26: see PARA 1378.

20 The reference to a director of a recognised body in the Administration of Justice Act 1985 Sch 6 para 5(1) (a) or (b) includes a reference to a person who was a director of the body at the time of the conduct leading to the making of the order referred to therein: Sch 6 para 5(3). As from a day to be appointed Sch 6 para 5 is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (7)(a)(ii), (b) to replace the word 'director' with the word 'manager' wherever it occurs. At the date at which this volume states the law no such day had been appointed.

21 Ie under the Administration of Justice Act 1985 s 32: Sch 6 para 5(1).

22 Administration of Justice Act 1985 Sch 6 para 5(1). The committee must not take a case into consideration during any period within which proceedings by way of appeal may be brought which may result in Sch 6 para 5(1) being rendered inapplicable in that case, or while any such proceedings are pending: Sch 6 para 5(2).

As from a day to be appointed in relation to proceedings for the revocation of a recognition under para 5(1), the Discipline and Appeals Committee may make such order as it considers fit as to the payment of costs by the Council, or the body to whose recognition the proceedings relate: para 5(4) (added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (7)(c)). Where such an order is made the Council or the body concerned may appeal to the High Court, and on any such appeal the High Court may make such order as it thinks fit: Administration of Justice Act 1985 Sch 6 para 6(1A) (added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (8)(b)). The decision of the High Court on such an appeal is final: Administration of Justice Act 1985 Sch 6 para 6(2). At the date at which this volume states the law no such day had been appointed.

23 Administration of Justice Act 1985 Sch 6 para 6(1) (as prospectively amended: see note 7). The decision of the High Court on such an appeal is final: Sch 6 para 6(2).

24 Ie by virtue of the Administration of Justice Act 1985 Sch 6 para 3(1A)(a): see PARA 1402.

25 As to the Investigating Committee see PARA 1359 et seq.

26 Ie rules applicable by virtue of the Administration of Justice Act 1985 s 32: see PARA 1392.

27 Ie a condition subject to which its recognition has effect: see PARA 1394.

28 Administration of Justice Act 1985 Sch 6 para 3A(1) (Sch 6 para 3A prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (5)). The amount of such any penalty may not exceed such amount as is prescribed by rules made by the Council for these purposes: Administration of Justice Act 1985 Sch 6 para 3A(4) (as so prospectively added).

A person against whom an order is made by the Investigating Committee by virtue of Sch 6 para 3A(1) may appeal to the Discipline and Appeals Committee, and on any such appeal the Discipline and Appeals Committee may make such order as it thinks fit (Sch 6 para (3A)(6) (as so prospectively added)). Where such an order is made by the Discipline and Appeals Committee a party to the appeal, or if different, the Council, may appeal against the order to the High Court (Sch 6 para (3A)(8) (as so prospectively added)). On such an appeal the High Court may make such order as it thinks fit (Sch 6 para (3A)(9) (as so prospectively added)). The decision of the High Court is final (Sch 6 para (3A)(10) (as so prospectively added)).

29 Administration of Justice Act 1985 Sch 6 para 3A(2) (as prospectively added: see note 28). For the purposes of the Council or the recognised body, manager or employee against whom proceedings were brought, the reference to costs includes costs incurred in connection with a preliminary investigation of the allegation under Sch 6 para 3 (see PARA 1402): Sch 6 para 3A(3) (as so prospectively added). Schedule 4 paras 1, 2(1), (3), 4 (see PARAS 1365, 1375, 1378) have effect in relation to: (1) proceedings for the hearing and determination of an allegation by the Investigating Committee, as they have effect in relation to proceedings before the Discipline and Appeals Committee under s 26 (see PARA 1378) (Sch 6 para (3A)(5)(a) (as so prospectively added)); and (2) orders of the Investigating Committee, as they have effect in relation to orders of the Discipline and Appeals Committee (Sch 6 para (3A)(5)(b) (as so prospectively added)).

If an order is made by the Investigating Committee by virtue of Sch 6 para 3A(2), the person concerned may appeal to the Discipline and Appeals Committee, and on any such appeal the Discipline and Appeals Committee may make such order as it thinks fit (Sch 6 para (3A)(7) (as so prospectively added)). Where such an order is made by the Discipline and Appeals Committee a party to the appeal, or if different, the Council, may appeal against the order to the High Court (Sch 6 para (3A)(8) (as so prospectively added)). On such an appeal the High Court may make such order as it thinks fit (Sch 6 para (3A)(9) (as so prospectively added)). The decision of the High Court is final (Sch 6 para (3A)(10) (as so prospectively added)).

UPDATE

1403 Hearing and determination of allegations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

TEXT AND NOTES 1-9, 12-29--Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1404. Revocation of recognition on grounds of fraud or error.

1404. Revocation of recognition on grounds of fraud or error.

Where the Discipline and Appeals Committee¹ is satisfied that the recognition² of a body corporate was granted as a result of any error, or as a result of fraud on the part of that body, the committee may, if it thinks fit, by order revoke that body's recognition³. As from a day to be appointed, and in relation to such proceedings, the committee may make such order as it considers fit as to the payment of costs by the Council for Licensed Conveyancers⁴, or the body to whose recognition the proceedings relate⁵. At the date at which this volume states the law no such day had been appointed.

A body corporate may be granted recognition⁶ notwithstanding that any recognition previously granted to it has been revoked under the above provision; but if any such recognition was so revoked on the ground of fraud that body may not be granted recognition except on an application made in that behalf to the committee⁷. As from a day to be appointed, and in relation to such proceedings, the committee may make such order as it considers fit as to the payment of costs by the Council, or the applicant⁸. At the date at which this volume states the law no such day had been appointed.

1 As to the Discipline and Appeals Committee see PARA 1362.

2 ie under the Administration of Justice Act 1985 s 32: see PARA 1392.

3 Administration of Justice Act 1985 s 32(7), Sch 6 para 7(1). Section 30, Sch 4 para 4 (see PARA 1378) applies to any such order: Sch 6 para 9(2). Where it is considered that recognition was granted to any body as a result of error or of fraud on its part, and the Council for Licensed Conveyancers decides that there is any question of the committee exercising its powers under Sch 6 para 7(1) the Council must refer the matter to the Committee: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 4(2). Such a reference under this rule must be made in writing, state that it is made under this r 4, and set out the allegation and a summary of the facts relied on to support it: r 4(3). A copy of such a reference must be served on the respondent, together with a copy of the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001: r 4(4). On such a reference, the committee must hold a hearing to determine the allegation: r 4(5). As to the statutory instrument containing those rules see PARA 1365 note 12. As to the procedure which then pertains see PARA 1367 et seq. As to the meaning of 'respondent' see PARA 1367 note 8.

As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 7 is amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 32(1), (9)(a), Sch 23 to remove the word 'corporate' wherever it appears; and the Administration of Justice Act 1985 Sch 6 para 9(2) is repealed by the Legal Services Act 2007 s 210, Sch 23. At the date at which this volume states the law no such day had been appointed.

4 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

5 Administration of Justice Act 1985 Sch 6 para 7(3) (Sch 6 para 7(3), (4) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (9)(b)).

6 See note 2.

7 Administration of Justice Act 1985 Sch 6 para 7(2). Such an application must be made in writing, sent to the Council's principal place of business, specify the statutory provision under which it is made, and set out any facts which support the application: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 5. An applicant may amend the facts set out in his application by serving an amended notice under r 8 (see PARA 1367), but the consent of the committee is required for an amendment less than 21 days before the date of the hearing: see r 14(1). Where an amendment is made the committee may, on application by the respondent, postpone the hearing: r 14(2). As to the procedure with regard to hearings before the Discipline and Appeals Committee see PARA 1365 et seq. See also note 3.

8 Administration of Justice Act 1985 Sch 6 para 7(4) (as prospectively added: see note 5).

UPDATE

**1404-1408 Revocation of recognition on grounds of fraud or error ...
Application of rules relating to accounts and interest on clients' money**

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1405. Appeal against decision of Council for Licensed Conveyancers in relation to grant of recognition.

1405. Appeal against decision of Council for Licensed Conveyancers in relation to grant of recognition.

Where, in the case of any body corporate, the Council for Licensed Conveyancers¹ (1) refuses an application by that body for recognition²; (2) decides to grant recognition of that body subject to any restrictions; or, as from a day to be appointed, (3) decides to give a direction in relation to that body³; or (4) refuses an application by that body⁴, that body may appeal to the Discipline and Appeals Committee⁵ against that refusal or decision within one month of being notified of it⁶.

On such an appeal being made, the committee may (a) by order direct the Council to grant recognition of the body, either without restrictions or subject to certain restrictions⁷ as specified by the committee in the direction; or (b) affirm the refusal or decision of the Council; and the committee may make such order as to the payment of costs by the Council or by that body as it thinks fit⁸.

As from a day to be appointed the following provisions have effect. On an appeal under head (3) above, the committee may (i) revoke the direction of the Council⁹; (ii) direct that the body's recognition is to have effect subject to such conditions as may be specified by the Council in the direction; or (iii) affirm the decision of the Council, and the committee may make such order as to the payment of costs by the Council or by that body as it thinks fit¹⁰.

On an appeal under head (4) above, the committee may (A) direct the Council to grant the application, or (B) affirm the decision of the Council, and the committee may make such order as to the payment of costs by the Council or by that body as it thinks fit¹¹.

At the date at which this volume states the law no such day had been appointed.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Ie under the Administration of Justice Act 1985 s 32: see PARA 1392.

3 Ie under the Administration of Justice Act 1985 s 32(3B): see PARA 1394.

4 Ie under the Administration of Justice Act 1985 s 32(3D): see PARA 1394.

5 As to the Discipline and Appeals Committee see PARA 1362.

6 Administration of Justice Act 1985 s 32(7), Sch 6 para 8(1). Such an appeal to the committee must be made in writing and sent to the Council's principal place of business, and specify the statutory provision under which it is made, the refusal or decision appealed against and its date, and the grounds of appeal: Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 6. As to the procedure which then pertains see PARA 1367 et seq. As to the statutory instrument containing those rules see PARA 1365 note 12. As to the service of notices see PARA 1329 note 4.

Rules made by the Council may make provision, as respects any application for recognition that is neither granted nor refused by the Council within such period as may be specified in the rules, for enabling an appeal to be brought under the Administration of Justice Act 1985 Sch 6 para 8 in relation to the application as if it had been refused by the Council: Sch 6 para 8(3). For these purposes, where an application for recognition under s 32 (see PARA 1392) has not been granted or refused by the Council within 42 days, the applicant may bring an appeal under Sch 6 para 8 as if the application had been refused on the 42nd day after the application was lodged: see the Licensed Conveyancers' Discipline and Appeals Committee (Procedure) Rules 2001 r 7(1), (2). The applicant is deemed to have been notified of the refusal on that day, and the appeal must be brought within one month beginning with that day: r 7(3). As soon as possible after receiving an application for

recognition the Council must notify the applicant in writing of the date on which it was received: see r 7(4). An appellant may amend the grounds of his appeal or add further grounds by serving an amended notice under r 8 (see PARA 1367), but the consent of the committee is required for an amendment less than 21 days before the date of the hearing: see r 14(1). Where an amendment is made the committee may, on application by the respondent, postpone the hearing: r 14(2).

As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 8(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (10)(a)-(c) to remove the word 'corporate' wherever it appears, and to replace the word 'restrictions' in head (2) in the text, and to add heads (3) and (4) in the text. At the date at which this volume states the law no such day had been appointed

7 le restrictions falling within the Administration of Justice Act 1985 s 32(3)(d): see PARA 1392.

8 Administration of Justice Act 1985 Sch 6 para 8(2). Section 30, Sch 4 para 4 (see PARA 1378) applies to orders made by the committee under Sch 6: Sch 6 para 9(2).

As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 8(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (10)(d)-(e) to restricts its application to the Administration of Justice Act 1985 Sch 6 para 8(1)(a), (b) (see heads (1), (2) in the text), and to replace the references to 'restrictions' with references to 'conditions', and to repeal the reference to s 32(3)(d); and Sch 6 para 9(2) is repealed by the Legal Services Act 2007 s 210, Sch 23. At the date at which this volume states the law no such day had been appointed.

9 le a direction under the Administration of Justice Act 1985 s 32(3B): see PARA 1392.

10 Administration of Justice Act 1985 Sch 6 para 8(2A) (Sch 6 para 8(2A), (2B) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (10)(f)).

11 Administration of Justice Act 1985 Sch 6 para 8(2B) (as prospectively added: see note 10).

UPDATE

1404-1408 Revocation of recognition on grounds of fraud or error ... Application of rules relating to accounts and interest on clients' money

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1406. Intervention by the Council for Licensed Conveyancers.

1406. Intervention by the Council for Licensed Conveyancers.

Where:

- 2163 (1) the Council for Licensed Conveyancers¹ is satisfied that a recognised body² has failed to comply with any rules applicable³ to it⁴; or
- 2164 (2) a person has been appointed receiver or manager of property of a recognised body⁵; or
- 2165 (3) a winding-up order has been made with respect to a recognised body or a resolution for voluntary winding up has been passed with respect to a recognised body (other than a resolution passed solely for the purposes of its reconstruction or amalgamation with another body corporate) or a recognised body has entered administration⁶; or
- 2166 (4) the Council has reason to suspect dishonesty on the part of any officer⁷ or employee of a recognised body in connection with that body's business⁸; or
- 2167 (5) as from a day to be appointed, the Council is satisfied that a recognised body has been carrying on business in breach of any condition subject to which the body's recognition has effect⁹; or
- 2168 (6) as from a day to be appointed, a relevant insolvency event occurs in relation to a recognised body¹⁰; or
- 2169 (7) as from a day to be appointed, the Council is satisfied that it is necessary to exercise the powers of intervention¹¹ in relation to a recognised body to protect
 - (a) the interests of clients (or former or potential clients) of the recognised body;
 - (b) the interests of the beneficiaries of any trust of which the recognised body is or was a trustee; or
 - (c) the interests of the beneficiaries of any trust of which a person who is or was a manager or employee of the recognised body is or was a trustee in that person's capacity as such a manager or employee¹²,

then the intervention powers conferred on the Council are exercisable in relation to the recognised body and its business in like manner as they are exercisable in relation to a licensed conveyancer¹³ and his practice¹⁴. At the date at which this volume states the law no such day had been appointed.

Those intervention powers are also exercisable in relation to a recognised body and its business where:

- 2170 (i) a complaint is made to the Council that there has been undue delay on the part of a recognised body in connection with any matter in which it was instructed on behalf of a client¹⁵; and
- 2171 (ii) the Council by notice in writing invites the body to give an explanation within such period following the giving of the notice as may be specified, being a period of not less than eight days¹⁶; and
- 2172 (iii) the body fails within that period to give an explanation which the Council regards as satisfactory¹⁷; and
- 2173 (iv) the Council gives notice of the failure to the body and (at the same or any later time) notice that those intervention powers are accordingly exercisable in its case by virtue of this provision¹⁸.

Where the intervention powers are exercisable in relation to a recognised body in accordance with the above provisions, they continue to be exercisable after that body's recognition has been revoked or has otherwise ceased to be in force¹⁹.

Where the recognition²⁰ of a body corporate has been revoked by an order of the Discipline and Appeals Committee²¹ or has expired and no further recognition of that body has been granted, the intervention powers are exercisable in relation to the body corporate and its former business as a recognised body as they are exercisable in relation to a licensed conveyancer and his practice²².

1 As to the Council for Licensed Conveyancers see PARA 551.

2 As to the meaning of 'recognised body' see PARA 1402 note 4.

3 le by virtue of the Administration of Justice Act 1985 s 32: see PARA 1392.

4 Administration of Justice Act 1985 s 32(7), Sch 6 para 10(1)(a). As from a day to be appointed Sch 6 para 10(1)(a) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (12)(a) so that it applies also to a manager of a recognised body who has failed to comply with the relevant rules. At the date at which this volume states the law no such day had been appointed.

5 Administration of Justice Act 1985 Sch 6 para 10(1)(b).

6 Administration of Justice Act 1985 Sch 6 para 10(1)(c) (amended by SI 2003/2096). As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 10(1)(c) is substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (12)(c). At the date at which this volume states the law no such day had been appointed.

7 As to the meaning of 'officer' see PARA 1392 note 37.

8 Administration of Justice Act 1985 Sch 6 para 10(1)(d). As from a day to be appointed Sch 6 para 10(1)(d) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (12)(d) to replace the reference to 'officer' with a reference to 'manager', and to extend the provision's application to the suspicion of dishonesty in connection with a recognised body's business, any trust of which that body is or was a trustee, any trust of which the manager or employee is or was a trustee in his capacity as such a manager or employee, or the business of another body in which the manager or employee is or was a manager or employee or the practice (or former practice) of the manager or employee. At the date at which this volume states the law no such day had been appointed.

9 Administration of Justice Act 1985 Sch 6 para 10(1)(aa) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (12)(b)). As to conditional recognition see the Administration of Justice Act 1985 s 32; and PARA 1394.

10 Administration of Justice Act 1985 Sch 6 para 10(1)(c) (prospectively substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (12)(c)). For these purposes a relevant insolvency event occurs in relation to a recognised body if:

- 608 (1) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under the Insolvency Act 1986 s 89 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 941);
- 609 (2) the body enters administration within the meaning of the Insolvency Act 1986 Sch B1 para 1(2)(b) (see **COMPANIES** vol 15 (2009) PARAS 1339, 1377);
- 610 (3) an administrative receiver within the meaning of the Insolvency Act 1986 s 251 is appointed (see **COMPANIES** vol 15 (2009) PARA 1337);
- 611 (4) a meeting of creditors is held in relation to the body under the Insolvency Act 1986 s 95 (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 942);
- 612 (5) an order for the winding up of the body is made: Administration of Justice Act 1985 Sch 6 para 10(1A) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (12)(g)).

11 le the powers conferred by the Administration of Justice Act 1985 s 31(1), Sch 5 Pt II: see PARA 1385 et seq.

12 Administration of Justice Act 1985 Sch 6 para 10(1)(e) (prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (12)(f)).

13 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

14 Administration of Justice Act 1985 Sch 6 para 10(1). The intervention powers are only exercisable by virtue of Sch 6 para 10(1)(a) (see head (1) in the text) if the Council has given the recognised body notice in writing that it is satisfied that the body has failed to comply with the rules specified in the notice and also (at the same or any later time) notice that those powers are exercisable in its case by virtue of Sch 6 para 10(1)(a): Sch 6 para 10(2). As to the service of notices see PARA 1329 note 4. As from a day to be appointed Sch 6 para 10(2) is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 32(1), (12)(h), Sch 23. At the date at which this volume states the law no such day had been appointed.

In connection with the application of the Administration of Justice Act 1985 Sch 5 Pt II for the purposes of Sch 6, in Sch 5 Pt II any reference (1) to the licensed conveyancer or to his practice is to be construed as including a reference to the body corporate in relation to which the powers conferred by Sch 5 Pt II are exercisable by virtue of Sch 6 para 10, 11 or 12(1) or to its business, or former business, as a recognised body; (2) to Sch 5 para 1 (see PARA 1384) is to be construed as including a reference to Sch 6 para 10 or 12(1); and (3) to Sch 5 para 3 (see PARA 1384) is to be construed as including a reference to Sch 6 para 11: Sch 6 para 13. As from a day to be appointed: (a) Sch 5 para 6(2)(a) (see PARA 1385) is to be construed as including a reference to sums of money held by or on behalf of the recognised body in connection with any trust of which a person who is or was manager or employee of that body is or was a trustee in his capacity as such a manager or employee; (b) Sch 5 para 9 (see PARA 1386) is to be construed as if Sch 5 para 9(1) included a reference to documents in the possession or under the control of the recognised body in connection with any trust of which a person who is or was a manager or employee of that body is or was a trustee in his capacity as such a manager or employee, and as applying to a person who is or was a manager or employee of the recognised body and documents and property in his possession or under his control in connection with such a trust as it applies to a recognised body and documents and property in the possession or under the control of that body; (c) Sch 5 para 10A(1) (see PARA 1388) is to be construed as including power for the Council to apply to the High Court for an order for the appointment of a new trustee to a trust in substitution for a person who is a trustee in his capacity as a manager or employee of the recognised body; and (d) Sch 5 para 12A (see PARA 1389) is to be read as if the references to a former partner were references, in the case of a recognised body which is a partnership, to a former partner in the partnership, and in any other case to a manager or former manager of the recognised body: Sch 6 para 13 (d)-(g) (prospectively added by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 32(1), (15)(b)).

As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 13 is also amended by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 32(1), (15)(a), Sch 23 to remove the word 'corporate' from head (1) above. At the date at which this volume states the law no such day had been appointed.

15 Administration of Justice Act 1985 Sch 6 para 11(a). See also note 14. As to the meaning of 'client' see PARA 1353 note 5. As from a day to be appointed Sch 6 para 11(a) is substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (13) so that the intervention powers are instead exercisable where the Council is satisfied that there has been undue delay on the part of either a recognised body in connection with any matter in which it is or was acting on behalf of a client or with any trust of which it is or was a trustee, or a person who is or was a manager or employee of a recognised body in connection with any trust of which he is or was a trustee in his capacity as such a manager or employee. At the date at which this volume states the law no such day had been appointed.

16 Administration of Justice Act 1985 Sch 6 para 11(b). See also note 14.

17 Administration of Justice Act 1985 Sch 6 para 11(c). See also note 14.

18 Administration of Justice Act 1985 Sch 6 para 11(d). See also note 14.

19 Administration of Justice Act 1985 Sch 6 para 12(2). See also note 14.

20 le under the Administration of Justice Act 1985 s 32: see PARA 1392.

21 le an order under the Administration of Justice Act 1985 Sch 6: see PARA 1402 et seq. As to the Discipline and Appeals Committee see PARA 1362.

22 Administration of Justice Act 1985 Sch 6 para 12(1). See also note 14.

UPDATE

1404-1408 Revocation of recognition on grounds of fraud or error ...
Application of rules relating to accounts and interest on clients' money

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1407. Examination of files.

1407. Examination of files.

Until a day to be appointed, where the Investigating Committee (the 'committee')¹ is satisfied that it is necessary to do so for the purposes of investigating an allegation or complaint², the committee may give notice to the recognised body³ to which the allegation or complaint relates requiring the production or delivery to any person appointed by the committee, at a time and a place to be fixed by the committee, of all documents in the body's possession in connection with the matters to which the allegation or complaint relates (whether or not they also relate to other matters)⁴.

As from that day where the committee is satisfied that it is necessary to do so for the purpose of investigating any allegation⁵, the committee may give an information notice to a relevant person⁶. An information notice is a notice requiring the production or delivery to any person appointed by the committee, at a time and a place to be fixed by the committee, of all documents in the possession or under the control of the relevant person in connection with the matters to which the allegation relates (whether or not they relate also to other matters)⁷.

1 As to the Investigating Committee see PARA 1359 et seq.

2 Ie any such allegation or complaint as is mentioned in the Administration of Justice Act 1985 s 32(7), Sch 6 para 3(1)(a)(ii) or (b): see PARA 1402.

3 As to the meaning of 'recognised body' see PARA 1402 note 4.

4 Administration of Justice Act 1985 Sch 6 para 14(1). The provisions of s 31(1), Sch 5 para 9(2)-(12) (see PARA 1386), together with Sch 5 paras 11, 12 (see PARAS 1385-1386, 1389), apply in relation to the powers conferred on the Investigating Committee by Sch 6 para 14(1) as they apply to the powers conferred on the Council for Licensed Conveyancers by Sch 5 para 9(1); and accordingly in those provisions any reference (1) to the Council is to be construed as including a reference to the committee: (2) to the licensed conveyancer is to be construed as including a reference to the body with respect to which the powers are exercisable by virtue of Sch 6 para 14(1); (3) to a person appointed, or to a requirement, under Sch 5 para 9(1) is to be construed as including a reference to a person appointed, or to a requirement, under Sch 6 para 14(1); and (4) any reference to any such documents as are mentioned in Sch 5 para 9(1) is to be construed as including a reference to any such documents as are mentioned in Sch 6 para 14(1): Sch 6 para 14(2). As to the meaning of 'licensed conveyancer' see PARA 1319 note 3; and as to the Council for Licensed Conveyancers see PARA 1320 et seq.

As from a day to be appointed Sch 6 para 14(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (16)(b) to apply the Administration of Justice Act 1985 Sch 5 para 12A (see PARA 1389), to include references to Sch 6 para 14(1A) (see the text and note 7) and to add references to managers and employees as necessary. At the date at which this volume states the law no such day had been appointed.

5 Ie any allegation mentioned in the Administration of Justice Act 1985 Sch 6 para 3(1)(a)(ii), (aa) or (ab): see PARA 1402.

6 Administration of Justice Act 1985 Sch 6 para 14(1) (Sch 6 para 14(1) prospectively substituted and Sch 6 para 14(1A), (1B) prospectively added by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (16) (a)). 'Relevant person' means, in the case of an allegation against a recognised body, the recognised body or any of its managers or employees, and in the case of an allegation against a manager or employee of a recognised body, the manager or employee, the recognised body or any other manager or employee of the recognised body: Administration of Justice Act 1985 Sch 6 para 14(1B) (as so prospectively added).

7 Administration of Justice Act 1985 Sch 6 para 14(1A) (prospectively added: see note 6).

UPDATE

1404-1408 Revocation of recognition on grounds of fraud or error ...
Application of rules relating to accounts and interest on clients' money

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(7) RECOGNISED BODIES/1408. Application of rules relating to accounts and interest on clients' money.

1408. Application of rules relating to accounts and interest on clients' money.

Where rules requiring licensed conveyancers to deliver reports by qualified accountants containing certain financial information to the Council for Licensed Conveyancers¹ are applied² to recognised bodies³, an accountant is qualified to give any report required to be delivered under the rules if he is eligible for appointment as a statutory auditor⁴. An accountant is not, however, qualified to give any such report in relation to a recognised body if he is prohibited⁵ from acting as a statutory auditor of that body⁶.

Where rules relating to the establishment of client accounts⁷ and containing any provision relating to interest on clients' money⁸ are applied⁹ to recognised bodies, then, except as provided by the rules, a recognised body which in pursuance of the rules maintains an account in which it keeps money received or held for or on account of its clients generally is not liable to any person for interest received by it on money in that account¹⁰. Nothing in any such rules or in this provision, however, affects any arrangement in writing between a recognised body and any of its clients as to the application of the client's money or the payment of interest on it¹¹.

1 The rules made under the Administration of Justice Act 1985 s 22(3)(a): see PARA 1353. As to the meaning of 'licensed conveyancer' see PARA 1319 note 3; and as to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 The in accordance with the Administration of Justice Act 1985 s 32(3): see PARA 1392.

3 As to the meaning of 'recognised body' see PARA 1402 note 4.

4 Administration of Justice Act 1985 Sch 6 para 15(1) (amended by SI 2008/948). Eligibility to act as a statutory auditor is determined under the Companies Act 2006 Pt 42 (ss 1209-1264) (see **COMPANIES** vol 15 (2009) PARA 969). As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 15 is repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 32(1), (17), Sch 23. At the date at which this volume states the law no such day had been appointed.

5 The prohibited under the Companies Act 2006 s 1214 (independence requirement): see **COMPANIES** vol 15 (2009) PARA 971.

6 Administration of Justice Act 1985 Sch 6 para 15(2) (amended by SI 2008/948). See note 4.

7 The rules made under the Administration of Justice Act 1985 s 22(2): see PARA 1353. As to the meaning of 'client' and 'client account' see PARA 1353 note 5.

8 The any such provision as is referred to in Administration of Justice Act 1985 s 23(1): see PARA 1357.

9 See note 2.

10 Administration of Justice Act 1985 Sch 6 para 16(1). As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 16(1) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (18)(a) to include references to managers or employees of recognised bodies. At the date at which this volume states the law no such day had been appointed.

11 Administration of Justice Act 1985 Sch 6 para 16(2). As from a day to be appointed the Administration of Justice Act 1985 Sch 6 para 16(2) is amended by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 32(1), (18)(b) to include references to managers or employees of recognised bodies. At the date at which this volume states the law no such day had been appointed.

UPDATE

**1404-1408 Revocation of recognition on grounds of fraud or error ...
Application of rules relating to accounts and interest on clients' money**

Day appointed for the purpose of these provisions is 31 March 2009: SI 2009/503.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(8) MISCELLANEOUS PROVISIONS RELATING TO LICENSED CONVEYANCING/1409. Legal professional privilege.

(8) MISCELLANEOUS PROVISIONS RELATING TO LICENSED CONVEYANCING

1409. Legal professional privilege.

Until a day to be appointed, any communication made (1) to or by a licensed conveyancer¹ in the course of his acting as such for a client²; or (2) to or by a recognised body³ in the course of its acting as such for a client, is privileged from disclosure in any legal proceedings in the same way as if the licensed conveyancer or recognised body had at all material times been acting as the client's solicitor⁴.

As from that day, where a licensed conveyancer or recognised body acts as such for a client, any communication, document, material or information is privileged from disclosure in like manner as if the licensed conveyancer or body had at all material times been acting as the client's solicitor⁵. At the date at which this volume states the law no such day had been appointed.

1 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

2 As to the meaning of 'client' see PARA 1353 note 5.

3 As to the meaning of 'recognised body' see PARA 1392 note 13.

4 Administration of Justice Act 1985 s 33 (s 33 prospectively substituted by the Legal Services Act 2007 s 182, Sch 17 Pt 1 paras 1, 22).

5 Administration of Justice Act 1985 s 33(1), (2) (as prospectively substituted: see note 4). Section 33 does not apply to a recognised body which holds a licence under the Legal Services Act 2007 Pt 5 (ss 71-111) (alternative business structures) (see PARA 1476 et seq): Administration of Justice Act 1985 s 33(3) (as so prospectively substituted).

UPDATE

1409-1410 Legal professional privilege, Commissioners for oaths

Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(8) MISCELLANEOUS PROVISIONS RELATING TO LICENSED CONVEYANCING/1410. Commissioners for oaths.

1410. Commissioners for oaths.

The Council for Licensed Conveyancers¹ is a prescribed body² for the purposes of certain statutory provisions relating to the administration of oaths and taking of affidavits³ and every licensed conveyancer⁴ has certain statutory powers conferred⁵ on a commissioner for oaths⁶. No licensed conveyancer may exercise those powers in any proceedings in which he is interested⁷.

As from a day to be appointed⁸ the administration of oaths is a reserved legal activity for the purposes of the Legal Services Act 2007⁹ and a person may be authorised to carry on such activities by the Council¹⁰. However, during a transitional period¹¹ every licensed conveyancer, every conveyancing partnership¹² and every recognised body¹³ is deemed to be authorised by to carry on the administration of oaths¹⁴.

1 As to the Council for Licensed Conveyancers see PARA 1320 et seq.

2 Ie a body prescribed by the Lord Chancellor for the purposes of the Courts and Legal Services Act 1990 s 113(1)(b) by regulations made under the Courts and Legal Services Act 1990: s 119(1).

3 Ie the Courts and Legal Services Act 1990 s 113: see PARA 577.

4 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

5 Ie conferred by the Commissioners for Oaths Acts 1889 and 1891 (see **CIVIL PROCEDURE** vol 11 (2009) PARA 1027) and the Stamp Duties Management Act 1891 s 24 (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1110): see the Courts and Legal Services Act 1990 s 113(3); and PARA 577.

6 Commissioners for Oaths (Prescribed Bodies) Regulations 1994, SI 1994/1380, regs 2, 3.

7 See the Courts and Legal Services Act 1990 s 113(5); and PARA 577.

8 The Legal Services Act 2007 ss 12, 13, Sch 5 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

9 See the Legal Services Act 2007 s 12; and PARA 512. As to the meaning of 'administration of oaths' see PARA 512 note 8.

10 See the Legal Services Act 2007 s 13(2)(a), Sch 5 para 2; and PARA 515.

11 As to the meaning of 'transitional period' see PARA 516 note 9.

12 'Conveyancing partnership' means a partnership at least some of the members of which are licensed conveyancers: Legal Services Act 2007 Sch 5 para 11(5).

13 Ie every body recognised under the Administration of Justice Act 1985 s 32: see PARA 1392.

14 Legal Services Act 2007 Sch 5 para 11(1), (3)(b). This is subject to the regulatory arrangements of the Council: Sch 5 para 11(2), (4).

UPDATE

1409-1410 Legal professional privilege, Commissioners for oaths

Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

1410-1411 Commissioners for oaths, Modification of certain enactments relating to conveyancing etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/5. LICENSED CONVEYANCERS/(8) MISCELLANEOUS PROVISIONS RELATING TO LICENSED CONVEYANCING/1411. Modification of certain enactments relating to conveyancing etc.

1411. Modification of certain enactments relating to conveyancing etc.

Any reference to a solicitor in certain statutory provisions relating to conveyancing¹ is to be construed as including a reference to a licensed conveyancer² and any reference to a person's solicitor is to be construed as including a reference to a licensed conveyancer acting for that person³.

In certain other statutory provisions⁴, any reference to a solicitor is to be construed as including a reference to a licensed conveyancer or to a recognised body⁵, and any reference to a person's solicitor is to be construed as including a reference to a licensed conveyancer or recognised body acting for that person⁶.

The Estate Agents Act 1979 does not apply⁷ to things done in the course of the provision of conveyancing services⁸ by a licensed conveyancer or a recognised body⁹.

1 In the Law of Property Act 1925 ss 69, 75(1) (see PARA 787; and **SALE OF LAND** vol 42 (Reissue) PARAS 305, 315); Administration of Justice Act 1985 s 34(1)(a).

2 As to the meaning of 'licensed conveyancer' see PARA 1319 note 3.

3 Administration of Justice Act 1985 s 34(1) (amended by the Land Registration Act 2002 s 135, Sch 13).

4 In (1) the Law of Property Act 1925 ss 10(2), 48, 182 (see **SALE OF LAND** vol 42 (Reissue) PARAS 130, 146; **TRUSTS** vol 48 (2007 Reissue) PARA 1116); (2) the Land Charges Act 1972 s 12 (see **LAND CHARGES** vol 26 (2004 Reissue) PARA 703); (3) the Local Land Charges Act 1975 s 13 (see **LAND CHARGES** vol 26 (2004 Reissue) PARA 708); and (4) the Estate Agents Act 1979 s 11(8) (see **AGENCY** vol 1 (2008) PARA 279); Administration of Justice Act 1985 s 34(2)(a), (c)-(e). As from a day to be appointed s 34(2)(c)-(e) (see heads (2)-(5)) are repealed by the Legal Services Act 2007 ss 182, 210, Sch 17 Pt 1 paras 1, 24, Sch 23. At the date at which this volume states the law no such day had been appointed.

5 As to the meaning of 'recognised body' see PARA 1392 note 14.

6 Administration of Justice Act 1985 s 34(2) (amended by the Land Registration Act 2002 Sch 13; and the Family Law Act 1996 s 66(3), Sch 10).

7 In by virtue of the Estate Agents Act 1979 s 1: see **AGENCY** vol 1 (2008) PARAS 240-241.

8 As to the meaning of 'conveyancing services' see PARA 1319 note 2.

9 Administration of Justice Act 1985 s 34(3).

UPDATE

1410-1411 Commissioners for oaths, Modification of certain enactments relating to conveyancing etc

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1411 Modification of certain enactments relating to conveyancing etc

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Day appointed is 31 March 2009: SI 2009/503.

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6. NOTARIES

(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES

(i) The Office of Notary

A. IN GENERAL

1412. Meaning of 'notary'.

A notary public is a legal officer appointed by the Court of Faculties¹, whose general role it is, amongst other matters, to draw, attest or certify, under an official seal, documents which are intended for use in other jurisdictions². A notary may also prepare wills or other testamentary documents, note or certify transactions relating to negotiable instruments and draw up protests or other formal papers relating to shipping and the cargo conveyed therein. The office further confers the right to administer oaths and declarations³.

The profession is an ancient one⁴ and is to be found worldwide, especially in civil law jurisdictions. By the law of nations, the acts of a notary have credit everywhere⁵.

Until a day to be appointed, in any enactment 'duly certificated notary public' means a notary public who either (1) has in force a practising certificate as a solicitor⁶, duly entered in the Court of Faculties of the Archbishop of Canterbury in accordance with rules made by the Master of the Faculties⁷; or (2) has in force a practising certificate as a notary public issued by the Court of Faculties in accordance with rules so made⁸.

As from a day to be appointed a notary is a person qualified to perform notarial activities, which is to say activities which were customarily carried on by virtue of enrolment as a notary⁹. Notarial activities are reserved legal activities for the purposes of the Legal Services Act 2007¹⁰.

1 As to the Court of Faculties see PARA 1413.

2 Such documents, which include deeds and conveyances of real property, and powers of attorney, are generally prepared and drawn in such a manner as to render them readily acceptable in the receiving country: see, for a general discussion of the execution and proof of documents, Brooke's Notary (12th Edn, 2002) ch 11.

3 As to this function see PARA 1460.

4 In ancient times notaries recorded matters of judicial importance, as well as important private transactions or events where an officially authenticated record or a document drawn up with professional skill or knowledge was necessary or advisable. An instructive history of the origin and development of the office of notary can be found in Brooke's Notary (12th Edn, 2002) pp 1-17.

5 *Hutcheon v Mannington* (1802) 6 Ves 823 per Lord Eldon LC. See also PARA 1462.

6 le under the Solicitors Act 1974 ss 9-18: see PARA 667 et seq.

7 As to the Master of the Faculties and his power to make rules see PARAS 1413, 1437.

8 Solicitors Act 1974 ss 87(1), 89(7) (definition in s 87(1), and s 89(7) prospectively repealed by the Legal Services Act 2007 ss 177, 210, Sch 16 Pt 1 paras 1, 75(c), 76, Sch 23). Thus a solicitor who is also a notary is only liable to take out one certificate, but it must be entered in the Court of Faculties: Solicitors Act 1974 s 87(1); Public Notaries (Practising Certificates) Rules 1991 r 4. For transitional provisions see note 10.

9 See the Legal Services Act 2007 s 12, Sch 2 para 7(1) (not yet in force). A notary is enrolled under the Public Notaries Act 1801 s 1 (see PARA 1418). The activities referred to in the Legal Services Act 2007 Sch 2 para 7(1) do not include activities carried on by virtue of the Solicitors Act 1974 s 22 or 23 (as prospectively repealed: see PARAS 592, 595-596) (reserved instrument activities and probate activities), or by virtue of the Courts and Legal Services Act 1990 s 113 (see PARA 577) (administration of oaths): Legal Services Act 2007 Sch 2 para 7(2) (not yet in force).

10 See the Legal Services Act 2007 ss 12, 13, Sch 2; and PARA 512 et seq. During a transitional period, every duly certificated notary is deemed to be authorised by the Master of the Faculties to carry on the following activities:

2174 (1) reserved instrument activities (Sch 5 para 12(1), (2)(a));

2175 (2) probate activities (Sch 5 para 12(1), (2)(b));

2176 (3) notarial activities (Sch 5 para 12(1), (2)(c));

2177 (4) the administration of oaths (Sch 5 para 12(1), (2)(d)).

The above authority is exercisable in accordance with and subject to the regulatory arrangements of the Master of the Faculties: Sch 5 para 12(3).

For these purposes 'duly certificated notary' means a notary who either:

2178 (a) has in force a practising certificate as a solicitor issued under the Solicitors Act 1974 (see PARA 667 et seq) and is duly entered in the Court of Faculties of the Archbishop of Canterbury in accordance with rules made by the Master of the Faculties (Legal Services Act 2007 Sch 5 para 12(4)(a)); or

2179 (b) has in force a practising certificate as a public notary issued by the said Court of Faculties in accordance with rules so made (Sch 5 para 12(4)(b)).

As to the meaning of 'reserved instrument activities' see PARA 512 note 5. As to the meaning of 'probate activities' see PARA 512 note 6. As the meaning of 'transitional period' for these purposes see PARA 516 note 9. During the transitional period a person may also be an exempt person under the Legal Services Act 2007 if carrying out notarial activities by virtue of an employee who is an authorised person in relation to that activity: see Sch 5 para 13; and PARA 516.

UPDATE

1412 Meaning of 'notary'

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 8--Repeals in force 1 January 2010: SI 2009/3250.

TEXT AND NOTE 9--Day appointed is 1 January 2010: SI 2009/3250.

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1413. The Court of Faculties, the Master of the Faculties and the Notarial Advisory Board.

Since 1533 all faculties appointing notaries to practise in England have been issued by the Archbishop of Canterbury, through his Court of Faculties¹. The chief officer of the court is known as the Master of the Faculties². The Master's inherent powers³ have been clarified by statutory powers of appointment⁴. He exercises jurisdiction over notaries after their appointment⁵. As from a day to be appointed⁶ the Master is an approved regulator for the purposes of the Legal Services Act 2007⁷.

In 2002 a Notarial Advisory Board was established to advise the Master and the registrar to the court on any matter pertaining to the notarial profession in England and Wales and its regulation⁸.

1 He under the Ecclesiastical Licences Act 1533 s 11. In the period before the Reformation the appointment of notaries throughout Western Christendom lay with the Pope, who, so far as regards the whole of England and Wales, delegated his powers of appointment to his legate, the Archbishop of Canterbury. Accordingly, in England and Wales it was under a licence or faculty granted by the Archbishop of Canterbury in exercise of his legatine powers that a notary in this period received the right to practise: see Ayliffe's *Parergon* 384. See, however, Cheney *Notaries Public in England in the Thirteenth and Fourteenth Centuries* (1972) p 4, doubting this view. The Pope's right to exercise jurisdiction was formally ended by the Ecclesiastical Licences Act 1533 s 16 (repealed), and any person applying to the Court of Rome for a faculty became liable to the penalty specified in the Statute of Praemunire (1392-3) (repealed). See also Brooks, Helmholz and Stein *Notaries Public in England since the Reformation* (1991). As to the Court of Faculties see **ECCELSIASTICAL LAW** vol 14 para 1273.

2 He is the same as the Dean of the Arches: see **ECCELSIASTICAL LAW** vol 14 PARA 1273.

3 He the powers which were originally exercised by the Pope and were taken to be transferred to the Archbishop of Canterbury by the Ecclesiastical Licences Act 1533 (see note 1). With the exception of those rules made under the Public Notaries Act 1843 s 4 (see note 4), rules and orders made by the Master before 1 July 1991 (ie the commencement of the Courts and Legal Services Act 1990 s 57), must be taken to have been made under the Master's inherent power. As to the Master's power to make such rules (many of which have since been ratified by an order made under s 57) see PARA 1437.

4 He under the Public Notaries Act 1843 s 4 (as to which see PARAS 1424, 1435).

5 He under the Courts and Legal Services Act 1990 s 57 (as to which, and the rules made under it, see PARA 1424).

6 The Legal Services Act 2007 s 20, Sch 4 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

7 See the Legal Services Act 2007 s 20, Sch 4 para 1; and PARA 358 et seq. The Master is an approved regulator for the purposes of reserved instrument, probate and, notarial activities, and the administration of oaths: Sch 4, para 1. As to the meaning of 'reserved instrument activities' see PARA 512 note 5. As to the meaning of 'probate activities' see PARA 512 note 6. As to the meaning of 'notarial activities' see PARA 512 note 7.

8 See the Notaries (Miscellaneous Provisions) Rules 2002 rr 2-4. The board may consider any matter of its own motion, or that may be referred to it by the Master or the registrar: r 4. The board comprises the members from time to time of the Qualifications Board and the chairman of the Qualifications Board is chairman of the board: r 3. As to the Qualifications Board see PARA 1426.

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B. CLASSES OF NOTARIES

1414. In general.

There are three classes of public notaries, namely ecclesiastical¹, general² and scrivener³ notaries. The Court of Faculties⁴ additionally appoints some notaries who practise overseas⁵. Certain diplomatic and consular officers are also entitled to act as notaries in foreign countries⁶. The former class of district notaries was abolished in 1990⁷.

1 See PARAS 1415, 1422-1423.

2 See PARAS 1416, 1424-1430.

3 See PARAS 1416, 1431-1434.

4 As to the Court of Faculties see PARA 1413.

5 See PARA 1435.

6 See PARA 1417.

7 Courts and Legal Services Act 1990 s 57(1), (3). The Public Notaries Act 1833, which established this class of notary, is consequently repealed: Courts and Legal Services Act 1990 s 125(7), Sch 20.

UPDATE

1414 In general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(i) The Office of Notary/B. CLASSES OF NOTARIES/1415. Ecclesiastical notaries.

1415. Ecclesiastical notaries.

In England and Wales the office of ecclesiastical notary¹ is normally held by the diocesan registrars and by the legal secretaries of the bishops².

1 As to the appointment, powers and liabilities of ecclesiastical notaries see PARAS 1422-1423.

2 See the Notaries (Qualification) Rules 1998 r 4; and PARA 1422. The offices of diocesan registrar and legal secretary are often, but not always, held by the same person. As to these offices see **ECCLESIASTICAL LAW** vol 14 PARA 1281.

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1416. General and scrivener notaries.

For most of the history of the profession there was a distinction between general¹ and scrivener² notaries, with the former holding a faculty³ to practise in all places in England and Wales outside the area under the jurisdiction of the ancient Company of Scriveners of the City of London⁴, and the latter admitted to the freedom of the ancient company and thereby holding a faculty to practise anywhere in England or Wales. However, the scrivener's exclusive jurisdiction was abolished in 1999, and since then a public notary may practise as a notary in, or within three miles of, the City of London whether or not he is a member of the company⁵. In spite of this, scrivener notaries remain a discrete branch of the profession, specialising in international work⁶, and the company continues to prescribe particular standards of education and training for those wishing to practise as such⁷.

1 As to general notaries see PARA 1424 et seq.

2 As to scrivener notaries see PARA 1431 et seq.

3 'Faculty' signifies a privilege or special dispensation granted to a person by favour and indulgence to do that which by the law he cannot do: *Termes de la Ley* 324. As to the grant of faculty see PARA 1424.

4 The proper style of the Company is 'The Masters and Wardens and Assistants of the Society of Scriveners in the City of London'. The Company received its first charter from James I on 28 January 1617. The area under their jurisdiction was the City of London, the liberties of Westminster, the former borough of Southwark, and the area within a circuit of three miles of the City: Public Notaries Act 1801 s 13 (repealed).

5 See the Access to Justice Act 1999 s 53.

6 The scrivener notaries, through the Society of Scrivener Notaries, have full membership of the International Union of Notaries ('UINL'), conferring a high level of international recognition: see the Statutes of the UINL (Approved by the General Meeting on 2 October 2007), and the list of members on the UINL website, found, at the date at which this volume states the law, at www.uinl.net.

7 See Brooke's Notary (12th Edn, 2002) paras 4-06, and 4-11 to 4-13; and PARAS 1431-1433.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(i) The Office of Notary/B. CLASSES OF NOTARIES/1417. Diplomatic and consular officers acting as notaries.

1417. Diplomatic and consular officers acting as notaries.

Every British ambassador, envoy, minister, chargé d'affaires and secretary of an embassy or a legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul and consular agent, acting consul-general, acting vice-consul, and acting consular agent¹ exercising his functions in any foreign place may there administer any oath, take any affidavit and do any notarial act² which any notary public³ may do within the United Kingdom⁴; and every oath, affidavit, and notarial act administered, sworn or done by or before such person is as effectual as if duly administered, sworn or done by or before any lawful authority in any part of the United Kingdom⁵.

1 As to these officials see **INTERNATIONAL RELATIONS LAW** vol 61 (2010) PARAS 30, 31.

2 As to notarial acts see PARA 1455 et seq.

3 As from a day to be appointed 'notary public' includes a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to any activity which constitutes a notarial activity within the meaning of that Act (see Sch 2 para 7; and PARA 1412): Commissioners for Oaths Act 1889 s 6(1A) (prospectively added by the Legal Services Act 2007 s 208(1), Sch 21, paras 11, 13).

4 As to the meaning of 'United Kingdom' see PARA 1063 note 13.

5 Commissioners for Oaths Act 1889 s 6(1) (amended by the Commissioners for Oaths Act 1891 s 2). In order that any document may be admitted in evidence, it is not necessary to prove the seal or signature of such a person or his official character: Commissioners for Oaths Act 1889 s 6(2). For the power to apply s 6 to Commonwealth countries or the Republic of Ireland see **CIVIL PROCEDURE** vol 11 (2009) PARA 1027.

UPDATE

1417 Diplomatic and consular officers acting as notaries

NOTE 3--Day appointed is 1 January 2010: SI 2009/3250.

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C. QUALIFICATION TO PRACTISE

1418. Requirement to be duly sworn, admitted and enrolled.

No person in England and Wales is permitted to act as a public notary, or do any notarial act¹, unless he has been duly sworn, admitted and enrolled in the court in which notaries have been accustomed to be sworn, admitted and enrolled².

¹ As to notarial acts see PARA 1455 et seq. As from a day to be appointed the Public Notaries Act 1801 s 1 is amended by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 1, 2, Sch 23 to remove the reference to notarial acts. At the date at which this volume states the law no such day had been appointed.

² Public Notaries Act 1801 s 1 (amended by the Courts and Legal Services Act 1990 s 125, Sch 20; as prospectively amended (see note 1)). This provision does not apply to ecclesiastical notaries: see PARA 1423. But see the Notaries (Qualification) Rules 1998 rr 4, 10.4; and PARAS 1422. As to the Master of the Faculties see PARA 1413.

The court in which notaries are sworn, admitted and enrolled is the Court of Faculties: see PARA 1413.

UPDATE

1418-1419 Requirement to be duly sworn, admitted and enrolled, Penalty for practising without authority

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1418 Requirement to be duly sworn, admitted and enrolled

NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(i) The Office of Notary/C. QUALIFICATION TO PRACTISE/1419. Penalty for practising without authority.

1419. Penalty for practising without authority.

A person who, in his own name or in the name of any other person, acts or practises as a notary for gain, fee or reward without being able to prove, if required, that he is duly authorised so to do, is guilty of an offence, and is liable for every such offence on summary conviction to a fine not exceeding level 3 on the standard scale¹.

Provided he is duly certificated², a notary public is exempted from certain penal provisions of the Solicitors Act 1974 which are directed against unqualified persons preparing instruments relating to property or legal proceedings³ or preparing papers for probate purposes⁴ for fee, gain or reward⁵. If he acts when he is not duly certificated⁶ he ranks as an unqualified person⁷ for the purposes of that Act and will not be able to recover any costs in respect of anything done when acting as a solicitor⁸.

1 Public Notaries Act 1843 s 10(1) (amended by the Statute Law Revision Act 1891; the Courts and Legal Services Act 1990 s 125(7), Sch 20; and the Statute Law (Repeals) Act 1993 s 1(2), Sch 2 Pt I para 3(a)). Notwithstanding the Magistrates' Courts Act 1980 s 127(1), proceedings for an offence under the Public Notaries Act 1843 s 10(1) may be commenced within 12 months from the time when the offence was committed: Public Notaries Act 1843 s 10(2) (added by the Statute Law (Repeals) Act 1993 s 1(2), Sch 2 Pt I para 3(a)). As to the standard scale see PARA 571 note 1.

As from a day to be appointed the Public Notaries Act 1843 s 10 is repealed by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 4, 7, Sch 23. At the date at which this volume states the law no such day had been appointed.

2 As to the meaning of 'duly certificated notary public' see PARA 1412.

3 See the Solicitors Act 1974 s 22(1); and PARA 595.

4 See the Solicitors Act 1974 s 23(1); and PARA 592.

5 See the Solicitors Act 1974 ss 22(2)(a), 23(2); and PARAS 592, 595.

6 As to the issue, date and expiry of solicitors' practising certificates see the Solicitors Act 1974 s 14; and PARA 669 et seq.

7 As to the meaning of 'unqualified person' see PARAS 589 note 3, 642 note 12.

8 Solicitors Act 1974 s 25(1); and PARA 590.

UPDATE

1418-1419 Requirement to be duly sworn, admitted and enrolled, Penalty for practising without authority

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

1419 Penalty for practising without authority

NOTE 1--Day appointed is 1 January 2010: SI 2009/3250.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(i) The Office of Notary/C. QUALIFICATION TO PRACTISE/1420. Fees on admission.

1420. Fees on admission.

The fees payable on the grant of faculty¹, the issue of a practising certificate by the Court of Faculties² or the entering in that court of a solicitor's practising certificate³ may be regulated by orders made by the Master of the Faculties⁴.

1 le appointment as a notary public in England and Wales, as to which see PARA 1424 et seq.

2 As to the Court of Faculties see PARA 1413.

3 le a certificate issued under the Solicitors Act 1974: as to which see PARA 669 et seq.

4 Courts and Legal Services Act 1990 s 57(4)(i). See further the Public Notaries (Practising Certificates) Rules 1982 r 5(1); and the Notarial Contingency Fund Rules 1981. As to the power to make these rules and orders see PARA 1437. As to the Master of the Faculties see PARA 1413.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(i) The Office of Notary/C. QUALIFICATION TO PRACTISE/1421. Restrictions on practice.

1421. Restrictions on practice.

A person who holds certain judicial offices, or who is a member or chairman of a relevant tribunal¹ may not provide conveyancing or probate services², or practise as a public notary³.

As from a day to be appointed such a person may not engage in any notarial activities⁴.

1 See the Courts and Legal Services Act Sch 11; and PARA 582 note 1.

2 Courts and Legal Services Act 1990 s 75(b). As to the meaning of 'conveyancing services' see PARA 495 note 5. As to the meaning of 'probate services' see PARA 427 note 5.

3 See the Courts and Legal Services Act 1990 s 75(c).

4 See the Courts and Legal Services Act 1990 s 75(ba) (prospectively added by the Legal Services Act 2007 Sch 21 paras 83, 95); and PARA 582. As to the meaning of 'notarial activities' see PARA 1412.

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(ii) Appointment and Training

A. ECCLESIASTICAL NOTARIES

1422. Who may be appointed.

Any person appointed as registrar of either of the provinces of Canterbury or York¹, as registrar to the Archbishop of Wales or to certain other ecclesiastical offices² may apply for admission as a notary public for ecclesiastical purposes only upon satisfying the Master of the Faculties³ of the fact of such an appointment⁴. The Master is entitled to appoint in the exercise of his discretion unaffected by the Public Notaries Acts 1801 and 1843⁵.

The application procedure is generally the same as that for other notaries⁶, but the certificate of fitness⁷ must contain a statement that the applicant is conformable to the doctrine and discipline of the Church of England, or (as the case may be) the doctrine, discipline and constitution of the Church in Wales⁸.

1 As to these offices see **ECCLESIASTICAL LAW** vol 14 PARA 1281.

2 I.e. appointment as legal advisor to the General Synod of the Church of England, as legal secretary to the governing body of the Church in Wales; as registrar of any diocese in England or Wales, as an officer of the ecclesiastical court in Jersey or Guernsey, or (being a solicitor) as chapter clerk in any cathedral church in England or Wales, or as the deputy to any such officer: Notaries (Qualification) Rules 1998 r 4. As to the Notaries (Qualification) Rules 1998 see PARA 1437.

3 As to the Master of the Faculties see PARA 1413.

4 Notaries (Qualification) Rules 1998 r 4.

5 Cf *Bailleau v Victorian Society of Notaries* [1904] P 180, Court of Faculties, per Sir Lewis Dibdin KC, Master of the Faculties. The Master's discretion is derived from the Ecclesiastical Licences Act 1533 s 16 (repealed), which prescribed no particular qualifications: cf Brooke's Notary (12th Edn, 2002) paras 4-10.

6 As to admission procedure see PARA 1427.

7 I.e. the certificate of fitness required by the Notaries (Qualification) Rules 1998 r 10.2(a): see PARA 1427.

8 Notaries (Qualification) Rules 1998 r 10.4.

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1423. Public Notaries Acts not to apply.

The Public Notaries Acts 1801¹ and 1843 do not apply to ecclesiastical notaries², although they are in many instances treated as so applying³.

1 The Public Notaries Act 1801 has been largely repealed.

2 The Public Notaries Act 1801 is expressed not to apply to solicitors in any ecclesiastical court, nor to bishops' secretaries practising as secretaries, nor to any other person necessarily created a notary public for the purpose of holding any office or appointment, or occasionally performing any public duty or service under government, and not as general practitioners (ecclesiastical notaries): s 14 (amended by the Courts and Legal Services Act 1990 s 125, Sch 20); Solicitors Act 1974 ss 87(1), 89(7). See also *Norwich Notaries, Eaton v Watson, Eaton v Hansell* [1904] WN 24, Court of Faculties; and Brooke's Notary (12th Edn, 2002) paras 3-01, 4-10.

As from a day to be appointed the Public Notaries Act 1801 s 14 is amended by the Legal Services Act 2007 ss 208(1), 210, Sch 21 paras 1, 3, Sch 23, and the Solicitors Act 1974 s 89(7) and the definition of a notary in s 87(1) are repealed by the Legal Services Act 2007 ss 177, 210, Sch 16 Pt 1 paras 1, 75(c), 76, Sch 23. At the date at which this volume states the law no such day had been appointed.

3 See Brooke's Notary (12th Edn, 2002) para 3-01.

UPDATE

1423 Public Notaries Acts not to apply

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 2--Day appointed is 1 January 2010: SI 2009/3250.

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B. GENERAL AND SCRIVENER NOTARIES

(A) GENERAL NOTARIES

1424. Grant of faculty.

In 1990 significant changes were made with regard to the appointment and practice of notaries¹. Whilst they are still appointed pursuant to the Public Notaries Acts 1801 and 1843, the requirement for prospective notaries to serve a term of apprenticeship has been abolished². The power of the Master of the Faculties³ to make rules under the Public Notaries Act 1843 requiring the evidence as to the competency of the applicant and to admit or reject an applicant at his discretion⁴ was retained and the Master was granted further powers to make rules relating to the education and training qualifications which must be satisfied before a person may be granted a faculty to practise as a public notary⁵.

1 Ie by the Courts and Legal Services Act 1990.

2 Courts and Legal Services Act 1990 s 57(2).

3 As to the Master of the Faculties see PARA 1413.

4 See the Public Notaries Act 1843 s 4 (amended by the Statute Law Revision Act 1891; prospectively repealed in relation to the Isle of Man by the Statute Law (Repeals) Act 1998). As to the appointment of notaries overseas see PARA 1435.

5 Courts and Legal Services Act 1990 s 57(4)(a). As to this power and rules made under it see PARA 1437. As to the requirements of these rules see PARA 1425 et seq.

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1425. Qualification for admission as a public notary.

In order to be admitted as a public notary in England and Wales a person must be at least 21 years of age¹, have taken the required oaths² and, subject to certain exceptions³, be either a solicitor of the Supreme Court, a barrister at law, or hold a degree⁴. In addition, that person must have followed and attained a satisfactory standard in a course or courses of studies covering all of the following subjects⁵: (1) public/constitutional law; (2) the law of property; (3) the law of contract; (4) the law of the European Union; (5) Roman law; (6) equity and the law of trusts; (7) conflicts of law; (8) conveyancing; (9) business law and practice; (10) wills probate and administration; (11) notarial practice (including bills of exchange)⁶.

The Master of the Faculties may from time to time by order prescribe fees or the maximum fees which may be charged in respect of any such application⁷.

1 Notaries (Qualification) Rules 1998 rr 3.1, 5. As to the power to make these rules see PARA 1437.

2 Notaries (Qualification) Rules 1998 rr 3.2, 5. The required oaths are the oath of allegiance (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARAS 32, 923 et seq) and the oath required by the Public Notaries Act 1843 s 7 (amended by the Statute Law Revision (No 2) Act 1874; and the Statute Law Revision Act 1891; prospectively repealed in relation to the Isle of Man by the Statutes Law (Repeals) Act 1998).

Before a faculty is granted to any person to be admitted and enrolled as a public notary, he must swear before the Master, or his surrogate or proper officer, in the following terms: 'I A.B. do swear, that I will faithfully exercise the office of a public notary; I will faithfully make contracts or instruments for or between any party or parties requiring the same, and I will not add or diminish any thing without the knowledge or consent of such party or parties that may alter the substance of the fact; I will not make or attest any act, contract, or instrument in which I shall know there is violence or fraud; and in all things I will act uprightly and justly in the business of a public notary, according to the best of my skill and ability. So help me GOD.': Public Notaries Act 1843 s 7 (as so amended; and prospectively repealed in relation to the Isle of Man).

3 This requirement does not apply to an application to be admitted as an ecclesiastical notary (see PARA 1422) or a European Economic Area notary (see PARA 1428).

4 Notaries (Qualification) Rules 1998 rr 3.3, 5. A 'degree' means a qualification awarded following a post secondary course of at least three years' duration (or of an equivalent duration part time) at a university or an establishment of higher education or an establishment of similar level: r 2.

5 Notaries (Qualification) Rules 1998 rr 8.1, 5. Whether a particular course of studies satisfies the requirements of these rules and whether a person has obtained a satisfactory standard in that course is to be determined by the Master after seeking the advice of the Qualifications Board: r 8.2. The Master after seeking the advice of the board may by order direct that the award of a particular qualification meets the requirements of these rules as to some or all of the prescribed subjects (see heads (1)-(11) in the text): r 8.3. As a condition of making such a rule, the Master may require the body by which the qualification is awarded to issue those pursuing a course of studies leading to that qualification with such information about the notarial profession, these rules and other rules made by the Master and the Incorporated Company of Scriveners of London as the Master may specify: r 8.4. As to the Master of the Court of Faculties see PARA 1413. As to the Qualifications Board see PARA 1426.

6 See the Notaries (Qualification) Rules 1998 Sch 2. The Master may by order add or remove subjects, but before doing so must consult the board: r 8.5.

7 Notaries (Qualification) Rules 1998 r 7.4. Such fees may be applied by the Faculty Office towards meeting the expenses of the board but subject thereto the expenses of the board and of its members must be paid from and such fees must form part of the general notarial income of the Faculty Office: r 7.4. 'Faculty office' means

the registry of the Court of Faculties: Notaries (Qualification) Rules 1998 r 2. As to the Court of Faculties see
PARA 1413.

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1426. The Qualifications Board.

The function of the Qualifications Board is to advise the Master of the Faculties as follows¹:

- 613 (1) whether a degree or other qualification should be approved by him for the purpose of these rules²;
- 614 (2) on the standard of the qualifications of any person applying for admission as a general notary under these rules³;
- 615 (3) on the qualifications and experience of persons applying for recognition that they are eligible for admission as a European Economic Area notary⁴.

The Board must also advise any other body concerned with the administration or regulation of the notarial profession in England and Wales or any part of it on matters relating to qualifications and experience⁵. The Master may by order delegate to the board any of his functions under these rules relating to the approval or recognition of degrees, qualifications and experience⁶.

The board must comprise not more than ten persons appointed by the Master after consultation with the Incorporated Company of Scriveners of London⁷, the Society of Scrivener Notaries, the Notaries' Society and the Association of Solicitor Notaries in Greater London and such other persons or bodies as the Master may consider appropriate⁸. The Master must appoint one member of the board to be chairman for such period as he may determine⁹. Members of the board, including the chairman, hold office for such period as the Master may determine and may be removed from office by the Master at any time¹⁰. The registrar¹¹ must act as clerk to the board or may appoint or nominate another person to act as clerk in his place¹². The board must meet as often as may be necessary and in any event not less than once each year¹³, and it may delegate any of its functions to a subcommittee comprising not fewer than three of its members¹⁴.

1 Notaries (Qualification) Rules 1998 rr 7.1, 7.2. As to the power to make these rules see PARA 1437.

2 Notaries (Qualification) Rules 1998 r 7.2.1.

3 Notaries (Qualification) Rules 1998 r 7.2.2.

4 Notaries (Qualification) Rules 1998 r 7.2.3. As to admission as a European Economic Area notary see r 9; and PARA 1428.

5 Notaries (Qualification) Rules 1998 r 7.2.4.

6 Notaries (Qualification) Rules 1998 r 7.3.

7 As to the Incorporated Company of Scriveners of London see PARA 1416.

⁸ Notaries (Qualification) Rules 1998 Sch 1 para 1 (amended by virtue of the Notaries (Access to Justice Act) (Consequential Provisions) Rules 1999 r 11). The members of the board from time to time also comprise the members of the Notarial Advisory Board: see PARA 1413 text and note 8.

⁹ Notaries (Qualification) Rules 1998 Sch 1 para 2. The chairman of the board is also the chairman of the Notarial Advisory Board: see PARA 1413 text and note 8.

- 10 Notaries (Qualification) Rules 1998 Sch 1 para 3.
- 11 le the registrar of the Court of Faculties: Notaries (Qualification) Rules 1998 r 2.
- 12 Notaries (Qualification) Rules 1998 Sch 1 para 4.
- 13 Notaries (Qualification) Rules 1998 Sch 1 para 5.
- 14 Notaries (Qualification) Rules 1998 Sch 1 para 6.

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1427. Admission procedure.

A person qualified for admission as a notary¹ must apply in writing to the faculty office² on such form as the Master of the Faculties³ may from time to time specify⁴. The application must be accompanied by:

- 616 (1) a certificate of fitness in such form as the Master may from time to time prescribe to be given by a notary public to the effect that the applicant is known to him and that having made due inquiry to the best of his knowledge and belief the applicant is a fit and proper person to be created a notary public⁵;
- 617 (2) a certificate of good character in such form as the Master may from time to time prescribe to be given by a qualified person⁶ testifying to the good character, honesty, reliability, diligence and trustworthiness of the applicant and stating that the person giving the certificate knows of no reason why the applicant should not be created a notary public⁷; and
- 618 (3) such fee as the Master may from time to time prescribe⁸.

The Master may give, or require an applicant to give, such publicity to an application as in the circumstances appears to him to be necessary⁹. Any representations made to the Master following such publicity must be notified to the applicant, and the Master must consider any response thereto made by the applicant before deciding whether a faculty will be granted¹⁰.

Any decision by the Master to refuse an application must be notified to the applicant by the registrar¹¹ in writing to enable the applicant to pursue (if so advised) the remedy provided¹².

Upon the Master deciding to grant an application, the registrar must cause a faculty to pass the seal in accustomed form. The applicant must appear personally before the registrar to make the required oaths, and the registrar must then admit him by delivering the faculty to him and causing his name to be entered upon the roll of notaries. The Master may appoint a commissioner to act in place of the registrar for this purpose¹³.

1 See PARA 1425.

2 As to the meaning of 'faculty office' see PARA 1425 note 7. As to the Court of Faculties see PARA 1413.

3 As to the Master of the Faculties see PARA 1413.

4 Notaries (Qualification) Rules 1998 r 10.1.

5 Notaries (Qualification) Rules 1998 r 10.2(a).

6 A person is qualified to give the certificate of good character if he is a person of good standing and character, he has known the applicant for a period of not less than five years, he is not related to the applicant by blood, marriage or adoption, and he is not a professional partner, employer or employee of the applicant: r 10.3.

7 Notaries (Qualification) Rules 1998 r 10.2(b).

8 Notaries (Qualification) Rules 1998 r 10.5.

9 Notaries (Qualification) Rules 1998 r 11.1.

- 10 Notaries (Qualification) Rules 1998 r 11.2.
- 11 As to the meaning of 'registrar' see PARA 1426 note 11.
- 12 Notaries (Qualification) Rules 1998 r 11.3. The remedy is that provided for in the Ecclesiastical Licences Act 1533 and mentioned in the Public Notaries Act 1843 s 5 (see PARA 1429).
- 13 Notaries (Qualification) Rules 1998 r 11.4.

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1428. Admission of European Economic Area notaries.

Where a person:

- 619 (1) holds the office of notary public in a member state of the European Economic Area other than the United Kingdom¹;
- 620 (2) holds all the qualifications and has completed all the practical training necessary for appointment or admission to that office in such a member state but has not yet been so appointed or admitted²; or
- 621 (3) holds the office of notary public in Scotland or Northern Ireland³,

he may apply to the Master of the Faculties⁴ for recognition that he is qualified for admission as a general notary to practise anywhere in England and Wales⁵.

The Master must after consultation with the Qualifications Board⁶ examine any such application⁷.

Where such an application is made the Master must determine it as soon as possible and communicate the outcome to the applicant in a reasoned decision within four months of the production of all the certificates and documents relating to the applicant⁸. If the Master has refused an application or has not determined the application within four months he is deemed to have refused an application for a faculty and the applicant may pursue the remedy provided⁹.

1 Notaries (Qualification) Rules 1998 r 9.1(a).

2 Notaries (Qualification) Rules 1998 r 9.1(b).

3 Notaries (Qualification) Rules 1998 r 9.1(c).

4 As to the Master of the Faculties see PARA 1413.

5 Notaries (Qualification) Rules 1998 r 9.2. Such an application must be made to the Faculty Office, and in such form and accompanied by such information as the Master may from time to time by order prescribe: r 9.2. As to the meaning of 'Faculty Office' see PARA 1425 note 7.

6 As to the Qualifications Board see PARA 1426.

7 Notaries (Qualification) Rules 1998 r 9.3. The application must be examined in accordance with the relevant European procedures with regard to the recognition of professional qualifications: Notaries (Qualification) Rules 1998 rr 2, 9.3. The text of the rules refers to EC Council Directive 89/48 (OJ L19, 24.01.89, p 16) which has now been revoked and replaced by Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L255, 30.9.2005, p 22).

8 Notaries (Qualification) Rules 1998 r 9.4.

9 Notaries (Qualification) Rules 1998 r 9.5. The remedy is that provided for in the Ecclesiastical Licences Act 1533 and mentioned in the Public Notaries Act 1843 s 5 (see PARA 1429).

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1429. Remedy for refusal to appoint.

If the grant of the faculty is refused by the Master of the Faculties¹, complaint may be made to the Chancellor of the High Court², who may, by writ, require the reason for the refusal to be signified to the Crown, and the Crown may either allow the reason or, if it is held to be insufficient, direct the Master to grant the faculty³.

1 As to the Master of the Faculties see PARA 1413.

2 The Chancellor may appoint another judge of the High Court to exercise these functions: Public Notaries Act 1843 s 5 (as amended; and prospectively repealed in relation to the Isle of Man: see note 3).

3 Public Notaries Act 1843 s 5 (amended by the Statute Law Revision Act 1891; and by the Constitutional Reform Act 2005 s 15(1), Sch 4 Pt 1 para 13(1)-(3); and prospectively repealed in relation to the Isle of Man by the Statute Law (Repeals) Act 1998), applying the Ecclesiastical Licences Act 1533 s 11.

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1430. Effect of admission or grant of faculty.

As from a day to be appointed, the following provisions have effect¹. Despite any provision made by the Public Notaries Acts², a person's entitlement to carry on an activity which is a notarial activity³ is to be determined in accordance with the Legal Services Act 2007⁴.

Nothing in the Public Notaries Acts is to be regarded, for the purposes of exempt persons⁵ in relation to notarial activities⁶ as authorising a person to carry on such an activity⁷.

1 The Public Notaries Act 1843 s 7A is prospectively added by the Legal Services Act 2007 s 208(1), Sch 21 paras 4, 5. At the date at which this volume states the law, no such day had been appointed.

2 'Public Notaries Acts' means the Public Notaries Act 1801, and the Public Notaries Act 1843: s 7A(3). See note 1.

3 'Notarial activity' has the same meaning as the Legal Services Act 2007 (as to which see s 12, Sch 2 para 7(1); and PARA 512 note 7): Public Notaries Act 1843 s 7A(3).

4 Public Notaries Act 1843 s 7A(1). See note 1.

5 'Exempt persons' has the same meaning as the Legal Services Act 2007 (as to which see s 19; and PARA 516): s 7A(3). See note 1.

6 See under the Legal Services Act 2007 Sch 3 para 5(2): see PARA 521.

7 Public Notaries Act 1843 s 7A(2). See note 1.

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(B) SCRIVENER NOTARIES

1431. Qualification to practise as a scrivener notary.

No person is entitled to be admitted as a scrivener notary¹ until he has:

- 622 (1) given notice of his intention to qualify as such, accompanied by such fee as may from time to time be specified by the Incorporated Company of Scriveners of London²;
- 623 (2) qualified as a general notary in accordance with the relevant rules³;
- 624 (3) passed the examination in foreign law relevant to notarial practice⁴ or obtained an approved master's degree⁵, and passed the foreign language examinations and the examination in advanced notarial practice set by the company⁶;
- 625 (4) completed the prescribed period of practical training or supervised practice⁷;
- 626 (5) received a certificate of freedom of the company⁸.

1 'Scrivener notary' means a public notary who is a member of the company holding the qualifications to practise as a scrivener notary from time to time prescribed by the company: Scriveners (Qualifications) Rules 1998 r 2. See also PARA 1416. The Scriveners (Qualifications) Rules 1998 are made by the Master Wardens and Assistants of the Society of Scriveners of the City of London in pursuance of the powers conferred upon them by their charter. As a matter of professional practice no notary may describe himself professionally as a scrivener or a scrivener notary unless he holds the relevant qualifications: Notaries Practice Rules 2001 r 12.

2 Scriveners (Qualifications) Rules 1998 r 3(i). Notice is given to the clerk of the company: see rr 2, 3(i). 'Company' means the Master Wardens and Assistants of the Society of Scriveners of the City of London otherwise known as the Incorporated Company of Scriveners of London: r 2. See also PARA 1416.

The Notarial Committee of the company may, if it thinks fit, grant exemption to any candidate (ie any person who has given notice of his intention to qualify as a scrivener notary: r 2) who produces to the committee satisfactory evidence that at the time the notice was given the candidate already held a post-graduate degree in a relevant field of law which the committee after consultation with the Qualifications Board considers to be of a standard equivalent to an approved master's degree taking into consideration the contents of the course of study leading to the award of the degree concerned and the standing of the university or other institution concerned, and in such event the degree already held by the candidate must be considered an approved master's degree: r 5. 'Relevant field of law' means a field of law which in the opinion of the committee is relevant to a particular area or particular areas of the specialised international work undertaken by scrivener notaries, and the committee may from time to time, for the guidance of candidates, publish notes as to fields of legal practice which it considers peculiar to scrivener notaries or appropriate for them to engage in, lists of approved courses and other relevant information: r 6. 'Approved master's degree' means the degree referred to in r 4 (see note 4): r 2. As to the Qualifications Board see PARA 1426.

3 Scriveners (Qualifications) Rules 1998 r 3(ii). The relevant rules are the Notaries (Qualification) Rules 1998, and as to the qualification of notaries see PARA 1424 et seq.

4 In order that he may acquire the knowledge necessary to engage in the specialised areas of international legal practice undertaken by scrivener notaries any person wishing to qualify as such is required either to pass the examination in foreign law relevant to notarial practice (specified in the Scriveners (Qualifications) Rules 1998 Sch 3), or be in possession of a post-graduate degree in a relevant field of law from a university or other institute of higher education, the subject matter of the course leading to the degree having been approved by the committee after consultation with the Qualifications Board prior to the candidate's commencing the course concerned: r 4.

5 Scriveners (Qualifications) Rules 1998 r 3(iii)(a). Provision is made for examinations in rr 27-33.

6 Scriveners (Qualifications) Rules 1998 r 3(iii)(b). The examinations referred to in the text are set out in Schs 4 and 5. See also note 5.

7 Scriveners (Qualifications) Rules 1998 r 3(iv). The period of practical training or supervised practice is prescribed in rr 7-26: see PARAS 1432-1433.

8 Scriveners (Qualifications) Rules 1998 r 3(v). As soon as he has complied with the educational requirements prescribed by these rules and completed the period of his training agreement or supervised practice the candidate must produce to the clerk a certificate as required by r 13 (see PARA 1432 text and note 9), such certificates or statutory declaration as are required by r 15 (see PARA 1432 text and note 12) or such certificate as is referred to in r 26 (see PARA 1433 text and note 16) and he must then be admitted to the freedom of the company according to the rules, ordinances and procedures of the company and on payment of such fee or fees payable upon admission to the freedom of the company as are from time to time fixed by the company. Upon admission to the freedom of the company the clerk must give him a signed certificate to that effect: r 34.

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1432. Practical training.

In order to receive practical training and experience, a person who has given notice of his intention to qualify as a scrivener notary¹ must enter into a training agreement for a period of two years with a scrivener notary² in full-time independent practice as a principal³. Such period may, on application, be reduced at the discretion of the Notarial Committee of the Incorporated Company of Scriveners of London⁴ to such lesser period (being not less than six months) as the committee judges fit⁵.

The candidate may, with the permission of the scrivener notary with whom he has entered into a training agreement, spend up to six months of the prescribed two years working in the offices of notaries or lawyers in a foreign country⁶. Within one month after execution of the training agreement the candidate must produce the agreement to the clerk of the company, who must record in a register maintained for the purpose details of the names and addresses of those concerned, the date of execution of the agreement and the date of commencement of the period of training⁷.

Save for any period when he is working in a foreign country, the candidate must be instructed by the scrivener notary with whom he has entered into a training agreement in the proper business and practice of a scrivener notary throughout the full period⁸ of the training agreement and at the conclusion of that period the scrivener notary must certify that it has been properly completed⁹. If the scrivener notary dies before the expiry of the period of the training agreement, or discontinues his practice, or if the training agreement is cancelled by mutual agreement then the candidate may enter into a training agreement with another scrivener notary for the purpose of completing the remainder of the period¹⁰. In the event of the candidate's entering into two or more training agreements each scrivener notary concerned must individually and separately certify¹¹ that the candidate has, whilst being instructed by him, completed the period stated in the certificate inclusive of such period (if any) as he has spent in a foreign country provided that in the event of the death of any such scrivener notary the candidate must make a statutory declaration to the effect that he was instructed by the deceased scrivener notary until the date of his death¹².

1 He has given notice under the Scriveners (Qualifications) Rules 1998 r 3(i): see PARA 1431. A person who is in actual practice as a general notary may elect with the agreement of the committee to undergo a period of supervised practice instead of practical training: see rr 16-26; and PARA 1433.

2 As to the meaning of 'scrivener notary' see PARA 1431 note 1.

3 Scriveners (Qualifications) Rules 1998 r 7.1. As to the form of the training agreement see r 9, Sch 1.

4 As to the Incorporated Company of Scriveners of London see PARA 1431 note 2.

5 Scriveners (Qualifications) Rules 1998 r 7.1. In making the decision to reduce the period of practical training the committee must take into consideration any period during which the candidate has been in practice as a general notary or has been employed (with a view to qualification as a scrivener notary) in the office of a scrivener notary in full-time independent practice as a principal and the experience actually gained in the course of such practice or employment provided further that within six months of commencing such employment (such period to be extended to nine months in the case of a candidate whose employment commenced before 1 July 2001) the candidate must have given notice thereof to the clerk of the company accompanied by a copy of his contract of employment and the relevant fee: r 7.1. 'Employment' includes any period or periods (not exceeding a total period of six months) during which the candidate has at the request of

the scrivener notary by whom he was then employed spent prior to the entering into of his training agreement working in the office or offices of notaries or lawyers in a foreign country or countries for any of the relevant purposes: r 7.2. As to the meaning of 'candidate' see PARA 1431 note 2.

6 See the Scriveners (Qualifications) Rules 1998 r 8.

7 Scriveners (Qualifications) Rules 1998 r 10. Upon registration of the particulars of the training agreement the candidate must pay to the clerk such fee for registration as may from time to time be fixed by the company: r 11. The register is a public document and any person is entitled to inspect it at such place and during such office hours as may be determined by the company subject to payment of such reasonable fee for inspection as may from time to time be fixed by the company: r 12.

8 Or such lesser period as the company may prescribe: see the text and notes 4-5.

9 See the Scriveners (Qualifications) Rules 1998 r 13. The form of certification is prescribed in Sch 2.

10 Scriveners (Qualifications) Rules 1998 r 14. The period of instruction under the new training agreement is effectual as if the candidate had continued to be instructed by the scrivener notary with whom he previously had a training agreement provided that within one month after execution of the new training agreement, the candidate produces the same to the clerk who must record the details in the register (see note 7): r 14.

11 le in the form prescribed by the Scriveners (Qualifications) Rules 1998 Sch 1: r 15.

12 Scriveners (Qualifications) Rules 1998 r 15.

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1433. Supervised practice.

A person who is in actual practice as a general notary¹ may on application to the clerk of the company and with the agreement of the Notarial Committee of the Incorporated Company of Scriveners of London² elect to undergo a period of supervised practice in lieu of practical training³. Upon receipt of such an application the clerk must refer the matter to the committee and if, after deliberation, the committee accepts the candidate's application it will appoint a supervisor⁴ for the candidate and the clerk will notify the candidate accordingly⁵.

During the two years immediately following the appointment of the supervisor the candidate must practise as a notary under the supervision of the supervisor and:

- 627 (1) during that period the supervisor must visit the office of the candidate at least once in every period of four months to inspect the work, records and accounts of the candidate⁶;
- 628 (2) during that period the supervisor must make himself available at all reasonable times at his usual place of business to answer queries raised by the candidate on matters pertaining to the practice of a scrivener notary⁷.

A supervisor must ensure, in so far as he is able, that the candidate is aware of and complies with all rules and orders made by the Master of the Faculties⁸ and conducts himself in a manner calculated to maintain the reputation of the office of a scrivener notary⁹. A supervisor is also entitled to charge the candidate a fee or fees (not exceeding the level prescribed from time to time in regulations made by the committee) and approved by the company together with reasonable expenses of travel, subsistence and (where necessary) accommodation¹⁰. If a supervisor dies or discontinues his practice before the completion of the period of supervision then the committee must, on the application of the candidate made within one month of such death or discontinuance becoming known to him, appoint another supervisor willing to undertake the supervision of the candidate for the remainder of the period¹¹.

Every candidate must maintain a supervision register (in a format approved by the committee) in which must be recorded:

- 629 (a) by the supervisor a record of every visit and inspection made by him¹²;
- 630 (b) by the supervisor and the candidate a record of the fees charged by the supervisor¹³; and
- 631 (c) by the supervisor at the conclusion of the period of supervision a statement of whether or not in the supervisor's view the candidate is a fit and proper person to be admitted as a scrivener notary¹⁴.

At the conclusion of the supervision period the candidate must produce the supervision register to the clerk for scrutiny by the committee and, if required by the committee, the candidate must attend in person before them to answer any queries arising from such scrutiny and in order that he may, if the committee thinks fit, be examined viva voce on any matter concerning the practice of a scrivener notary and the deontology of the profession¹⁵. Following such scrutiny and, where applicable, examination the committee may either direct the chairman of the committee to issue to the candidate a certificate of completion of the

supervision period or it may extend the supervision for such further period as it considers reasonable in the circumstances of the case¹⁶.

1 le he has satisfied the requirements of the Scriveners (Qualifications) Rules 1998 r 3(iii): see PARA 1431.

2 As to the Incorporated Company of Scriveners of London see PARA 1431 note 2.

3 Scriveners (Qualifications) Rules 1998 r 16.

4 A supervisor must be a scrivener notary of at least five years' standing: Scriveners (Qualifications) Rules 1998 r 18.

5 Scriveners (Qualifications) Rules 1998 r 17. Upon notification of the appointment of a supervisor the candidate must pay to the clerk such fee in respect of the appointment as may from time to time be determined by the company: r 19. As to the meaning of 'candidate' see PARA 1431 note 2.

6 Scriveners (Qualifications) Rules 1998 r 20(i). The supervisor must not inspect, in the case of a candidate who is a solicitor or licensed conveyancer, any work, records or accounts relating to work which the candidate is qualified to undertake and does undertake as a solicitor or licensed conveyancer; or, in any other case, any work, records or accounts which the candidate for good reason is unwilling to show the supervisor provided that the candidate must arrange for the inspection of such work, records or accounts by another scrivener notary of at least five years' standing and who must advise the results of such inspection to the supervisor: r 20(i)(a), (b).

7 Scriveners (Qualifications) Rules 1998 r 20(ii).

8 As to the Master of the Faculties see PARA 1413.

9 Scriveners (Qualifications) Rules 1998 r 21.

10 Scriveners (Qualifications) Rules 1998 r 22.

11 Scriveners (Qualifications) Rules 1998 r 23.

12 Scriveners (Qualifications) Rules 1998 r 24(i) (including any inspection by another scrivener notary: see r 20(i)(b) and note 6).

13 Scriveners (Qualifications) Rules 1998 r 24(ii).

14 Scriveners (Qualifications) Rules 1998 r 24(iii).

15 Scriveners (Qualifications) Rules 1998 r 25.

16 Scriveners (Qualifications) Rules 1998 r 26.

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1434. European Economic Area scrivener notaries.

Any person qualified as a notary or notary public in a member state of the European Economic Area other than the United Kingdom¹ may apply to the Incorporated Company of Scriveners of London² for recognition that he is qualified to receive a certificate of freedom of the company in order to permit him to obtain a faculty enabling him to practise as a scrivener notary³. An aptitude test may be required⁴.

Where such an application is made the Notarial Committee of the Company must determine the application⁵ as soon as possible and communicate the outcome to the applicant in a reasoned decision within four months of the production of all the certificates and documents relating to the applicant⁶.

If the company refuses such an application, or has not determined the application within the time prescribed, the company is deemed to have refused an application for a certificate of freedom and the applicant is entitled to appeal against such refusal to the Master of the Faculties⁷.

1 As to the meaning of 'United Kingdom' see PARA 1063 note 13.

2 As to the Incorporated Company of Scriveners of London see PARA 1431 note 2.

3 Scriveners (Qualifications) Rules 1998 r 38(i). Such application must be made to the clerk to the company in such form and accompanied by such fee and by such information as the committee may from time to time prescribe: r 38(i).

4 See the Scriveners (Qualifications) Rules 1998 r 38(ii).

5 The committee of the company must, after consultation with the Qualifications Board, examine any such application in accordance with the procedures set out in the relevant European Council directive (the text of the rules refers to EC Council Directive 89/48 (OJ L19, 24.01.89, p 16) which has now been revoked and replaced by Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L255, 30.9.2005, p 22)): Scriveners (Qualifications) Rules 1998 r 38(ii). As to the Qualifications Board see PARA 1426.

6 Scriveners (Qualifications) Rules 1998 r 38(iii). The certificates and documents which must be produced are those referred to in the relevant European directive: r 38(iii). See also note 5.

7 Scriveners (Qualifications) Rules 1998 r 38(iv). As to the Master of the Faculties see PARA 1413.

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C. NOTARIES PRACTISING OVERSEAS

1435. Appointment.

The Master of the Faculties¹ inherent powers² included the issue of a faculty to any person to practise as a notary overseas³. Faculties are still issued for notaries in the Channel Islands, Gibraltar, Hong Kong, New Zealand, Papua New Guinea and some Australian states. In issuing the faculty the Master of the Faculties is guided mainly by local considerations of public convenience⁴.

1 As to the Master of the Faculties see PARA 1413.

2 As to which see PARA 1413.

3 Originally issued under the Ecclesiastical Licences Act 1533 s 2 (repealed) and subsequently, in respect of colonies, possessions etc, under the Public Notaries Act 1843 s 4 (amended by the Statute Law Revision Act 1891; prospectively repealed in relation to the Isle of Man by the Statute Law (Repeals) Act 1998).

4 *Bailleau v Victorian Society of Notaries* [1904] P 180, Court of Faculties; *Fay v Society of Notaries for the State of Victoria* [1909] P 15, Court of Faculties.

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D. CONTINUING EDUCATION

1436. Continuing education.

Newly admitted notaries require a period of two years' supervision by a practising notary who has practised for more than five years¹. The supervisor has a duty to inspect the notarial and accounting records of the newly admitted notary, visiting offices of the supervised notary at least once every four months². On each occasion the supervisor must prepare a report which will be placed in the records of both the supervised notary and the supervisor, and at the end of the two year period, the supervisor must inform the Master of the Faculties³ thereof in writing⁴.

Whilst under supervision, a notary is also required annually to attend certain continuing education courses approved by the Master⁵.

1 See the Notaries (Post-Admission) Rules 1991 rr 3, 4(1). The period of supervision may be extended (r 3(4)) or the Master may reduce or dispense with the requirement for supervision as he deems fit (see r 9). These rules apply only to notaries admitted after 13 June 1990, and do not apply to European Economic Area or ecclesiastical notaries: rr 3(1), 10. As to European Economic Area notaries see PARAS 1428, 1434. As to ecclesiastical notaries see PARAS 1415, 1422-1423.

The supervisor must not have his usual place of business more than 50 miles (or two hours' travel in normal conditions if shorter) from the place in which the supervised notary proposes to practise: r 4(2). It is a supervised notary's duty to notify the Faculty Office upon request of the name and address of his supervisor; and the duty of any notary to notify the Faculty Office upon request of the names and addresses of all notaries of whom he is the supervisor: r 4(3). A supervised notary must, on the death or retirement from practice of his supervisor, make arrangements for the supervision to be continued by another suitably qualified notary: see r 4(4). If for any reason other than the death or retirement of the supervisor, either party wishes the appointment of a particular supervisor to be terminated, application must be made for that purpose to the Master, who may terminate the supervision upon such conditions as he thinks fit: r 4(5).

A notary acting as a supervisor is entitled to charge appropriate fees: see r 8.

2 Notaries (Post-Admission) Rules 1991 r 5(2). This is subject to a provision relating to client confidentiality: see r 5(3). The supervising notary must make himself available to offer advice and guidance, and must take care, so far as possible, to ensure that the supervised notary is aware of all rules and orders relating to notaries, and conducts himself correctly: see r 5(4), (5). Certain areas of practice (connected with conveyancing or probate by the notary in his capacity as a solicitor or licensed conveyancer) are excluded from supervision, although the supervised notary must produce his records of those matters if requested by his supervisor: see r 5(1), (2).

3 As to the Master of the Faculties see PARA 1413.

4 See the Notaries (Post-Admission) Rules 1991 r 7. As to the content of the report see r 7(3).

5 See the Notaries (Post-Admission) Rules 1991 r 6.

UPDATE

1436 Continuing education

TEXT AND NOTES--Notaries (Post-Admission) Rules 1991 replaced by Notaries (Post-Admission) Rules 2009. The fee to be charged by a notary agreeing to act as a

supervisor may not exceed £250 for each visit made by the supervisor, together with reasonable expenses, plus value added tax: See Notaries (Supervision Fees) Regulation 2009.

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(iii) Professional Practice and Conduct

A. SUPERVISION OF NOTARIES

1437. Powers of the Master of the Faculties to supervise notaries.

The Master of the Faculties¹ has authority to make provision by rules relating to:

- 632 (1) educational and training qualifications of public notaries, including further training requirements;
- 633 (2) practice, conduct and discipline;
- 634 (3) the keeping by public notaries of records and accounts;
- 635 (4) the handling of clients' money;
- 636 (5) indemnification against losses arising from claims in respect of civil liability incurred by public notaries;
- 637 (6) compensation payable for losses suffered by persons in respect of dishonesty on the part of public notaries or their employees;
- 638 (7) the payment of such reasonable fees as may be prescribed, including fees for:
- 41 41. (a) the grant of a faculty;
- 42. (b) the issue of a practising certificate; or
- 43. (c) the entering of a practising certificate issued under the Solicitors Act 1974².
- 42

¹ As to the Master of the Faculties see PARA 1413.

² Courts and Legal Services Act 1990 s 57(4). As to the issue of practising certificates see PARA 1438.

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B. PRACTICE AS A NOTARY

1438. Practising certificates.

No person admitted as a public notary may hold himself out as a public notary in practice, or perform any notarial act, in England or Wales, unless he holds a current solicitor's practising certificate duly entered in the Court of Faculties, or a notarial practising certificate issued out of the Court of Faculties¹. To obtain a practising certificate a notary must deliver to the registry² a correctly completed application accompanied by the required fee, a specified contribution to the contingency fund³ and evidence of adequate indemnity insurance⁴. Upon receipt of these documents the registrar, having satisfied himself that the applicant is on the Roll of Notaries⁵, must issue a practising certificate⁶. The Master of the Faculties⁷ has the power to place restrictions on practising certificates, if deemed appropriate⁸. The entry or issue of a practising certificate is void and of no effect if the holder was knowingly guilty of making any false material statement in, or in relation to, his application⁹.

1 Public Notaries (Practising Certificates) Rules 1991 r 4. As to the power to make these rules see PARA 1437. As to the Court of Faculties see PARA 1413.

2 'Registry' means the registry of the Court of Faculties: Public Notaries (Practising Certificates) Rules 1982 r 15.

3 As to the contingency fund see the Notarial Contingency Fund Rules 1981 (as amended by the Notarial Contingency Fund (Amendment) Rules 1993).

4 Public Notaries (Practising Certificates) Rules 1982 rr 2, 5. As to indemnity insurance see PARA 1439.

5 As to entry upon the Roll of Notaries see PARA 1427.

6 Public Notaries (Practising Certificates) Rules 1982 rr 3, 6.

7 As to the Master of the Faculties see PARA 1413.

8 Public Notaries (Practising Certificates) Rules 1991 r 7.

9 Public Notaries (Practising Certificates) Rules 1982 r 14.

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1439. Indemnity insurance.

All notaries must have satisfactory indemnity insurance in order to be issued with a practising certificate¹. Applicants for a practising certificate who, as solicitors, are governed by the rules relating to solicitors' indemnity² are exempt from the following provisions³. An applicant who is not exempt on the basis of indemnification under the rules relating to solicitors' indemnity must, upon application for a practising certificate, deliver to the registry⁴ a current certificate of insurance against civil liability for professional negligence incurred by him in connection with his practice as a notary and a copy of the policy under which the insurance is provided⁵. If the registrar is of the opinion that by reason of the standing of the insurer, or by reason of the terms and conditions of the policy, the cover provided is inadequate, he must refer the matter to the Master of the Faculties; and in such a case the insurance will not be deemed to comply with the requirements for the issue of a practising certificate unless and until the Master declares himself satisfied that the cover is adequate having regard to the applicant's practice⁶. An applicant may also satisfy the requirements for indemnity insurance by showing either that he is covered under the terms of a policy issued to another notary or by delivering a certificate of insurance in his own name issued by the Solicitors' Indemnity Fund⁷. If the insurance cover of a notary public in force when his practising certificate was entered or issued ceases, for any reason, before the normal expiry of the practising certificate, then the entry or the certificate (as the case may be) will forthwith cease to have effect unless the registrar is satisfied that alternative insurance cover is already in force⁸.

An applicant must (save as hereinafter provided) also deliver to the registry a current certificate of insurance against financial loss suffered by a third party in consequence of any dishonest or fraudulent act or any omission by the applicant in connection with his practice as a notary⁹. Provided that this requirement must not apply if the applicant is a solicitor and third parties suffering such financial loss in connection with the applicant's practice as a notary would be eligible to apply to the Solicitors Regulation Authority for compensation¹⁰.

1 Public Notaries (Practising Certificates) Rules 1982 rr 2(d), 9 (amended by the Public Notaries (Practising Certificates) Rules 1991 r 5). As to the power to make these rules see PARA 1437. As to the issue of practising certificates see PARA 1438.

2 The Public Notaries (Practising Certificates) Rules 1982 r 9 refers to the Solicitors' Indemnity Rules 1987, which have been replaced by the Solicitors' Indemnity Rules 2007: see PARA 854.

3 Public Notaries (Practising Certificates) Rules 1982 r 9.

4 As to the meaning of 'registry' see PARA 1438 note 2.

5 Public Notaries (Practising Certificates) Rules 1982 r 10. Such insurance must provide cover in the sum of £100,000 or such sum as the Master of the Faculties may from time to time prescribe: r 10. As to the Master of the Faculties see PARA 1413.

6 Public Notaries (Practising Certificates) Rules 1982 r 11.

7 Public Notaries (Practising Certificates) Rules 1982 r 12. As to the Solicitors' Indemnity Fund see PARA 854.

8 Public Notaries (Practising Certificates) Rules 1982 r 13(1). 'Insurance cover' means indemnity insurance and the insurance required by r 13A (see text and notes 9, 10), and if the proviso to that rule ceases to apply to a notary, his insurance cover will be deemed to have ceased for the purposes: r 13(2).

9 Public Notaries (Practising Certificates) Rules 1982 r 13A. Such insurance must provide cover extending from the date on which the certificate of insurance was submitted to the registry to the 31 October next following or such date as may be agreed by the registrar: r 13A.

10 Public Notaries (Practising Certificates) Rules 1982 r 13A proviso. As to the compensation the Solicitors Regulation Authority can provide see PARA 862 et seq. The Public Notaries (Practising Certificates) Rules 1982 refer to the Law Society. In practice the body now responsible for dealing with compensation is the Solicitors Regulation Authority (see PARA 619 et seq).

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1440. Terms of practice and obtaining instructions.

A notary exercises his office in accordance with the oath¹ made by him at the time of his grant of faculty². If he is bankrupt, however, he may not, until he is discharged from bankruptcy, practise as a notary on his own behalf, but may practise as the employee of another notary³.

A notary must not directly or indirectly obtain, or attempt to obtain, instructions for professional work or permit another person to do so on his behalf, or do anything in the course of practising as a notary in any manner which compromises or impairs or is likely to compromise or impair any of the following⁴:

- 639 (1) the notary's independence or integrity⁵;
- 640 (2) a person's freedom to instruct a notary of his choice⁶;
- 641 (3) the notary's ability to act in the best interests of the client⁷;
- 642 (4) the good repute of the notary or of the notarial profession⁸;
- 643 (5) the notary's proper standard of work⁹;
- 644 (6) the notary's duty of care to persons in all jurisdictions who may place legitimate reliance on his notarial acts¹⁰.

1 le the oath under the Public Notaries Act 1843 s 7: see PARA 1425 note 2.

2 Notaries Practice Rules 2001 r 3.

3 Notaries Practice Rules 2001 r 4. As to bankruptcy see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**.

⁴ Notaries Practice Rules 2001 r 5.

5 Notaries Practice Rules 2001 r 5.1.

6 Notaries Practice Rules 2001 r 5.2.

7 Notaries Practice Rules 2001 r 5.3.

8 Notaries Practice Rules 2001 r 5.4.

9 Notaries Practice Rules 2001 r 5.5.

10 Notaries Practice Rules 2001 r 5.6.

UPDATE

1440 Terms of practice and obtaining instructions

TEXT AND NOTES--Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

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1441. Conflicts of interest and the duty to act impartially.

In the conduct of his practice a notary must not favour the interests of one client over those of another and must not favour his own interests or those of any other person over those of his clients¹. A notary must not act for both parties to a transaction unless:

- 645 (1) both have consented in writing²; and
- 646 (2) he is satisfied that there is no conflict of interest between the parties³,

but where a conflict of interests exists or arises a notary may act or continue to act for both parties for the sole purpose of resolving or attempting to resolve that conflict of interest⁴.

A notary must act impartially and in particular must not perform any notarial act⁵ which involves or may affect:

- 647 (a) his own affairs, including matters in which he is personally interested jointly with another person⁶;
- 648 (b) the affairs of his spouse or partner or a person to whom the notary is engaged to be married⁷;
- 649 (c) the affairs of a person to whom he is directly and closely related⁸;
- 650 (d) the affairs of a person with whom he shares a practice or with whom he shares offices⁹;
- 651 (e) the affairs of a person who has appointed the notary to be his attorney which concern a matter within the scope of the power of attorney granted¹⁰;
- 652 (f) the affairs of a trust of which he is a trustee or of an estate where he is a personal representative of the deceased¹¹;
- 653 (g) the affairs of a body corporate of whose board of directors or governing body he is a member¹²;
- 654 (h) the affairs of an employee of the notary¹³;
- 655 (i) the affairs of a partnership of which he is a member or of a company in which the notary holds shares either exceeding 5 percent of the issued share capital or having a market value exceeding such figure as the Master may from time to time specify¹⁴.

A notary who is the employee of a non-notary must not perform any notarial act as part of his employment or do or perform any notarial act for his employer or his employer's holding, associated or subsidiary company¹⁵. Where a notary by himself or with any other person operates, actively participates in, or controls any business, other than a notary's practice, he must take special care to ensure that there is no confusion between his notarial practice and his other business¹⁶.

1 Notaries Practice Rules 2001 r 6.1.

2 Notaries Practice Rules 2001 r 6.2.1.

3 Notaries Practice Rules 2001 r 6.2.2.

4 Notaries Practice Rules 2001 r 6.2.

5 'Notarial act' means any act that has validity by virtue only of its preparation, performance, authentication, attestation or verification by a notary: Notaries Practice Rules 2001 r 2. Notarial acts must normally be drawn up in the English language, although a notary may upon request or in appropriate circumstances prepare a notarial act in a language other than English if he has sufficient knowledge of the language concerned: rr 9.1, 9.2. A notary may not authenticate by means of a notarial act a document drawn up in a language other than English unless he has satisfied himself as to its meaning but this does not prevent a notary from authenticating the execution or signature of a document in any language: r 9.3. A notary may not certify the accuracy of a translation that has been made by someone other than himself unless he has knowledge of the language sufficient to satisfy himself as to the accuracy of the translation but this does not prevent a notary from attesting a translator's affidavit or authenticating a verification: 9.4.

6 Notaries Practice Rules 2001 r 7.1.

7 Notaries Practice Rules 2001 r 7.2. For these purposes 'partner' means a person with whom the notary cohabits or with whom he has a sexual relationship and includes a partner of the same sex: r 7.2.

8 Notaries Practice Rules 2001 r 7.3.

9 Notaries Practice Rules 2001 r 7.4.

10 Notaries Practice Rules 2001 r 7.5.

11 Notaries Practice Rules 2001 r 7.6.

12 Notaries Practice Rules 2001 r 7.7.

13 Notaries Practice Rules 2001 r 7.8.

14 Notaries Practice Rules 2001 r 7.9.

15 Notaries Practice Rules 2001 r 8.1. He may, however, act for a person who is also the client of the qualified legal practitioner or firm of qualified legal practitioners by which he is employed but he must take all proper and reasonable steps in the exercise of his notarial practice to maintain his independence of his employer and in particular he must:

2180 (1) ensure that his independence as a notary is fully recognised in writing in any contract of employment entered into by him; and

2181 (2) annually send to his employer a written statement of professional independence in a form approved by the Master from time to time, and must declare in his application for a notarial practising certificate that he has complied with this rule: r 8.2.

'Qualified legal practitioner' means a person qualified to provide legal services to the public in England and Wales, or a person qualified to provide legal services to the public under the laws of any other jurisdiction who practises as such in England and Wales: r 2.

16 See the Notaries Practice Rules 2001 r 14.1. This rule does not apply to the practice of a qualified legal practitioner: r 14.2.

UPDATE

1441 Conflicts of interest and the duty to act impartially

TEXT AND NOTES--Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/B. PRACTICE AS A NOTARY/1442. Undertakings.

1442. Undertakings.

Any notary giving an undertaking, whether oral or in writing, is personally liable for that undertaking, and the implementation of any such undertaking is required as a matter of conduct¹. An undertaking given by a notary must be in writing or confirmed in writing and signed by the notary giving it².

1 Notaries Practice Rules 2001 r 10.1. Save in exceptional cases a failure by a notary to honour an undertaking will constitute notarial misconduct for the purposes of the Public Notaries (Conduct and Discipline) Rules 1993: r 10.1. As to notarial misconduct see PARA 1449 note 2.

2 Notaries Practice Rules 2001 r 10.2.

UPDATE

1442 Undertakings

TEXT AND NOTES--Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/B. PRACTICE AS A NOTARY/1443. Publicity.

1443. Publicity.

A notary may advertise his practice and seek to obtain directly or indirectly clients and business in any manner and through any medium whether informative or promotional with the exception of unsolicited telephone calls or unsolicited visits to persons or organisations, as long as¹:

- 656 (1) the client's freedom to instruct a qualified person of the client's choice is not thereby unduly restricted²;
- 657 (2) the notary's good reputation for integrity and professional standards of work is not thereby damaged³;
- 658 (3) he complies with the relevant codes of practice in force from time to time⁴.

1 Notaries Practice Rules 2001 r 11. Nothing in this r 11 authorises the use of the word 'notaries' or any word designating or indicating notarial services in any publicity for activities which are not of a notarial nature: r 11.

2 Notaries Practice Rules 2001 r 11.1.

3 Notaries Practice Rules 2001 r 11.2.

4 Notaries Practice Rules 2001 r 11.3. Relevant codes of practice include the British Code of Advertising Practice, and the Independent Broadcasting Authority Code of Advertising Standards and Practices.

UPDATE

1443 Publicity

TEXT AND NOTES--Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/B. PRACTICE AS A NOTARY/1444. Fees, introductions and referrals.

1444. Fees, introductions and referrals.

A notary may charge a professional fee for all notarial work undertaken by him, and the basis upon which that fee will be calculated or the fee to be charged for the work done, must be made known in advance to any new client¹.

When a notary enters into an arrangement with another person for the introduction of clients to the notary or by the notary to the other person he must ensure²:

- 659 (1) that the client is informed in writing of the arrangement and of any commission or other benefit the notary may be receiving or pay³;
- 660 (2) that he either obtains the client's written agreement as to the destination of the commission or accounts to the client for the commission⁴;
- 661 (3) that he remains able to advise the client independently in accordance with these rules and continues to do so regardless of his own interests⁵.

¹ Notaries Practice Rules 2001 r 15.1. Further provision is made with regard to the sharing of professional fees in rr 15.2, 15.3.

² Notaries Practice Rules 2001 r 13.

³ Notaries Practice Rules 2001 r 13.1.

⁴ Notaries Practice Rules 2001 r 13.2.

⁵ Notaries Practice Rules 2001 r 13.3.

UPDATE

1444 Fees, introductions and referrals

TEXT AND NOTES--Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/C. ADMINISTRATION OF PRACTICE/1445. Name of a firm of notaries and notification of address.

C. ADMINISTRATION OF PRACTICE

1445. Name of a firm of notaries and notification of address.

The name of a firm of notaries must consist only of:

- 662 (1) the name or names of one or more present or former principals together with, if desired, conventional references to the firm and to such persons¹;
- 663 (2) a firm name in use on 1 January 1989²;
- 664 (3) the name of a firm of qualified legal practitioners of which a notary is a partner³; or
- 665 (4) one approved in writing by the Master of the Faculties⁴.

All notaries resident in England and Wales must notify the registry of the Court of Faculties⁵ in writing of any change in their principal place of business, or (in the case of persons not having a place of business) in their principal residential address⁶.

1 Notaries Practice Rules 2001 r 16.1.

2 Notaries Practice Rules 2001 r 16.2.

3 Notaries Practice Rules 2001 r 16.3.

4 Notaries Practice Rules 2001 r 16.4. As to the Master of the Faculties see PARA 1413.

5 As to the Court of Faculties see PARA 1413.

6 See the Notaries (Notification of Address) Rules 1982.

UPDATE

1445-1447 Administration of practice

Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/C. ADMINISTRATION OF PRACTICE/1446. Supervision of a notary's office.

1446. Supervision of a notary's office.

A notary must ensure that every office where he practises is and can reasonably be seen to be properly supervised¹. Such supervision must be exercised by a notary holding a practising certificate² who spends sufficient time at such office to ensure adequate control of the staff employed there and afford requisite facilities for consultation with clients³. Where supervision in accordance with this rule is prevented by illness, accident or other sufficient or unforeseen cause for a prolonged period, suitable alternative arrangements must be made without delay to ensure compliance⁴. In cases where a notary is not in attendance on days when his office is normally open to the public, he must make adequate arrangements to ensure the provision of notarial services to persons requiring the same⁵.

1 Notaries Practice Rules 2001 r 18.1. In determining whether or not there has been compliance with this requirement, account must be taken of, inter alia, the arrangements for the principals to see or be apprised of incoming communications: r 18.2.

2 As to practising certificates see PARA 1438.

3 Notaries Practice Rules 2001 r 18.1. The supervisor may be a principal, employee or consultant of the firm or a locum tenens: r 18.1.

4 Notaries Practice Rules 2001 r 18.3.

5 Notaries Practice Rules 2001 r 18.4.

UPDATE

1445-1447 Administration of practice

Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/C. ADMINISTRATION OF PRACTICE/1447. Records and accounting.

1447. Records and accounting.

A notary must keep proper records of his notarial acts¹, sufficient to identify²:

- 666 (1) the date of the act³;
- 667 (2) the person at whose request the act was performed⁴;
- 668 (3) the person or persons, if any, intervening in the act and, in the case of a person who intervened in a representative capacity, the name of his principal⁵;
- 669 (4) the method of identification of the party or parties intervening in the notarial act, and in the case of a party intervening in a representative capacity, any evidence produced to the notary of that party's entitlement so to intervene⁶;
- 670 (5) the nature of the act⁷;
- 671 (6) the fee charged⁸.

In the case of a notarial act in the public form⁹, the notary must place an original of the act or a complete photographic copy of the same in a protocol which must be preserved permanently by the notary¹⁰. Records of acts not in public form must be preserved for a minimum period of 12 years¹¹. A copy of a preserved notarial act or of the record of a notarial act, must, upon payment of a reasonable fee, be issued upon the application of any person or authority having a proper interest in the act unless prevented by order of a competent court¹².

All such records must be open at any time to inspection by the Master of the Faculties or a person authorised by him¹³.

When a notary ceases to practise as such, then he, or failing him his continuing notarial partners or the person having possession or custody of the records maintained by him, must arrange for such records to be transferred¹⁴:

- 672 (a) to another notary in practice appointed by him or by his continuing notarial partners¹⁵;
- 673 (b) to another notary in practice appointed, with the approval of the Master, by the persons having possession or custody of the records¹⁶; or
- 674 (c) to an archive designated for the purpose under regulations made by the Master from time to time¹⁷.

Detailed rules govern the keeping of client's money separately from the notary's own funds, and make provision as to the operation of such accounts, the safeguarding of notaries' clients' interests, and the allocation of any interest accrued¹⁸.

1 As to notarial acts see PARA 1461 et seq.

2 Notaries Practice Rules 2001 rr 19.1, 91.2. Rr 19-21 (see text and notes 3-18) apply to ecclesiastical notaries with certain modifications: see r 22.

3 Notaries Practice Rules 2001 r 19.2.1.

4 Notaries Practice Rules 2001 r 19.2.2.

5 Notaries Practice Rules 2001 r 19.2.3.

6 Notaries Practice Rules 2001 r 19.2.4.

7 Notaries Practice Rules 2001 r 19.2.5.

8 Notaries Practice Rules 2001 r 19.2.6.

9 As to the public form see PARA 1461.

10 Notaries Practice Rules 2001 r 19.3.

11 Notaries Practice Rules 2001 r 19.4. For the avoidance of doubt, such preservation may be by means of a suitable digital or other electronic system providing for the storage of documents in an indelible and unalterable format: r 19.4.

12 Notaries Practice Rules 2001 r 19.5. Any question as to whether a person has a proper interest must be determined by the Master of the Faculties: r 19.6. This provision applies to a notary or archive to which the records of any notary are transferred pursuant to r 21 (see text and notes 14-17) as they apply to the notary himself: r 21.2. As to the Master of the Faculties see PARA 1413.

13 Notaries Practice Rules 2001 r 20. This provision applies to a notary or archive to which the records of any notary are transferred pursuant to r 21 (see text and notes 14-17) as they apply to the notary himself: r 21.2.

14 Notaries Practice Rules 2001 r 21.1. The persons making such transfer must give written particulars to the registrar of the date of transfer and the person or archive to which the records were transferred: r 21.1.

15 Notaries Practice Rules 2001 r 21.1.1.

16 Notaries Practice Rules 2001 r 21.1.2.

17 Notaries Practice Rules 2001 r 21.1.3.

18 In the Notaries Accounts Rules 1989, the Notaries Trust Accounts Rules 1989 and the Notaries Accounts (Deposit Interest) Rules 1989.

UPDATE

1445-1447 Administration of practice

Notaries Practice Rules 2001 replaced by Notaries Practice Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/D. COMPLAINTS AND DISCIPLINARY PROCEDURES/(A) Complaints/1448. The Legal Services Ombudsman and the Office for Legal Complaints.

D. COMPLAINTS AND DISCIPLINARY PROCEDURES

(A) COMPLAINTS

1448. The Legal Services Ombudsman and the Office for Legal Complaints.

Until a day to be appointed, the Legal Services Ombudsman has responsibility for investigating allegations concerning the manner in which complaints made to any body having disciplinary powers in relation to notaries have been dealt with¹. The office was created by the Courts and Legal Services Act 1990². The Ombudsman has wide-ranging powers to order the reconsideration of complaints and the payment of compensation to complainants³, and to make recommendations as to the functioning of disciplinary bodies⁴.

As from a day to be appointed these functions will vest in the Office for Legal Complaints, which is constituted under the Legal Services Act 2007⁵.

1 See the Courts and Legal Services Act 1990 s 22(1) (as prospectively repealed); and PARA 425 et seq. As to the bodies having disciplinary powers in relation to notaries see PARA 1449 et seq. The Ombudsman may not investigate an issue which is being or has been determined by a disciplinary tribunal: see s 22(7) (as prospectively repealed); and PARA 426.

2 See the Courts and Legal Services Act 1990 s 21 (as prospectively repealed); and PARA 424.

3 See the Courts and Legal Services Act 1990 s 23 (as prospectively repealed); and PARA 431.

4 See the Courts and Legal Services Act 1990 s 24 (as prospectively repealed); and PARA 433.

5 See the Legal Services Act 2007 s 114, Sch 15 (Sch 15 not yet in fully force); and PARA 442 et seq.

UPDATE

1448-1454 Complaints and disciplinary procedures

Public Notaries (Conduct and Discipline) Rules 1993 replaced by Notaries (Conduct and Discipline) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/D. COMPLAINTS AND DISCIPLINARY PROCEDURES/(A) Complaints/1449. Referral to a designated society.

1449. Referral to a designated society.

Where the registrar of the Court of Faculties¹ receives an allegation concerning the conduct or practice of a public notary which in his opinion does not amount to an allegation of notarial misconduct² or where the precise nature of the allegation is unclear, he must refer the matter to a designated society³ to be dealt with in accordance with an approved procedure⁴.

Where an allegation against a public notary comes to the attention of a designated society (whether or not in the course of the operation of an approved procedure) and it appears that such allegation amounts to an allegation of notarial misconduct the designated society must refer the allegation to the registrar⁵.

1 See the Public Notaries (Conduct and Discipline) Rules 1993 r 2.

2 'Notarial misconduct' means (1) fraudulent conduct; (2) practising as a notary public without a valid practising certificate or in breach of a condition or limitation imposed on a practising certificate; or (3) other conduct unbecoming the office of a public notary: Public Notaries (Conduct and Discipline) Rules 1993 r 2. As to practising certificates see PARA 1438.

3 'Designated society' means the Incorporated Company of Scriveners, the Notaries' Society, the Society of Scrivener Notaries and such other bodies as the Master may from time to time designate for the purposes of these rules: Public Notaries (Conduct and Discipline) Rules 1993 r 2 (amended by virtue of the Notaries (Access to Justice Act) (Consequential Provisions) Rules 1999 r 11).

4 Public Notaries (Conduct and Discipline) Rules 1993 r 6(a). The Master of the Faculties may from time to time approve by written notice a complaints conciliation procedure produced by a designated society (and may at any time by written notice withdraw his approval of any procedure). An approved procedure may include provision:

2182 (1) for the informal resolution of disputes between members of the public and public notaries concerning notarial acts done by a public notary or the conduct of a public notary's practice;

2183 (2) for the informal resolution of disputes between members of the public and public notaries concerning the charges made by public notaries for notarial services;

2184 (3) for dealing with complaints about the conduct or practice of a public notary referred to a designated society by the registrar of the Court of Faculties or the Solicitors Regulation Authority;

and for such other matters as the Master may from time to time specify. An approved procedure must not include provision for the resolution of complaints of notarial misconduct made against a public notary: r 3. As to the Master of the Faculties see PARA 1413. The Public Notaries (Conduct and Discipline) Rules 1993 refer to the Law Society. In practice the body now responsible for dealing with complaints is the Solicitors Regulation Authority (see PARA 619).

5 Public Notaries (Conduct and Discipline) Rules 1993 r 7.

UPDATE

1448-1454 Complaints and disciplinary procedures

Public Notaries (Conduct and Discipline) Rules 1993 replaced by Notaries (Conduct and Discipline) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/D. COMPLAINTS AND DISCIPLINARY PROCEDURES/(A) Complaints/1450. Referral to a nominated notary.

1450. Referral to a nominated notary.

Where the registrar of the Court of Faculties receives an allegation concerning the conduct or practice of a public notary¹ which appears to him to amount to an allegation of notarial misconduct² he must appoint a nominated notary³ to investigate the allegation⁴. If he thinks fit, the nominated notary may prepare and prosecute disciplinary proceedings against public notaries in the Court of Faculties⁵.

Where a nominated notary investigates an allegation of notarial misconduct referred to him by the registrar but such investigation does not lead to the issue of disciplinary proceedings, the nominated notary is entitled, upon submitting an account to the registrar for approval, to be paid such fixed fee or to be paid at such rate for the work done as the Master of the Faculties⁶ may from time to time specify by order⁷.

1 Other than a scrivener notary: see PARA 1451.

2 As to the meaning of 'notarial misconduct' see PARA 1449 note 2.

3 A nominated notary appointed by the registrar must be a public notary (but not a scrivener notary) who holds a notarial practising certificate and has held such a certificate for not less than ten years: Public Notaries (Conduct and Discipline) Rules 1993 r 4.

4 Public Notaries (Conduct and Discipline) Rules 1993 r 6(b).

5 Public Notaries (Conduct and Discipline) Rules 1993 r 5(a). As to disciplinary proceedings see PARA 1452 et seq.

6 As to the Master of the Faculties see PARA 1413.

7 Public Notaries (Conduct and Discipline) Rules 1993 r 5(b). Such fee must be paid by the registrar out of the contingency fund: r 5(b).

UPDATE

1448-1454 Complaints and disciplinary procedures

Public Notaries (Conduct and Discipline) Rules 1993 replaced by Notaries (Conduct and Discipline) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/D. COMPLAINTS AND DISCIPLINARY PROCEDURES/(A) Complaints/1451. Allegations against scrivener notaries.

1451. Allegations against scrivener notaries.

Where the registrar of the Court of Faculties¹ receives an allegation concerning the conduct or practice of a scrivener notary which appears to him to amount to an allegation of notarial misconduct² he must refer the allegation to the Incorporated Company of Scriveners³.

Upon the referral of such an allegation to the company it must be investigated by the company under arrangements made by it and approved by the Master of the Faculties⁴, and if it thinks fit, the company, or one of its members, may prepare and prosecute disciplinary proceedings in the Court of Faculties against the scrivener notary in question⁵.

1 As to the Court of Faculties see PARA 1413.

2 As to the meaning of 'notarial misconduct' see PARA 1449 note 2.

3 Public Notaries (Conduct and Discipline) Rules 1993 r 6(c)(i). As to the Incorporated Company of Scriveners see PARA 1416.

4 As to the Master of the Faculties see PARA 1413.

5 Public Notaries (Conduct and Discipline) Rules 1993 r 6(c)(ii). The disciplinary proceedings must be prosecuted in accordance with these rules: see PARA 1453 et seq.

UPDATE

1448-1454 Complaints and disciplinary procedures

Public Notaries (Conduct and Discipline) Rules 1993 replaced by Notaries (Conduct and Discipline) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/D. COMPLAINTS AND DISCIPLINARY PROCEDURES/(B) Disciplinary Proceedings/1452. Appeals and hearings.

(B) DISCIPLINARY PROCEEDINGS

1452. Appeals and hearings.

In general the disciplinary proceedings of the Court of Faculties¹ are heard by a commissary appointed by the Archbishop of Canterbury². Interlocutory issues are dealt with by the commissary, but the matter itself is heard by the commissary sitting with two assessors³ chosen by him, one being a notary assessor⁴, and the other a lay assessor⁵. Questions of law are determined by the commissary alone, but all other issues are determined by majority decision⁶. If for any reason the commissary is unable or unwilling to perform his functions in relation to any matter, that matter must be assigned by the registrar of the court to a deputy commissary⁷, who must perform all of the functions in relation to that matter which would have been performed by the commissary⁸.

1 As to the Court of Faculties see PARA 1413.

2 See the Notarial Appeals and Hearing Rules 2000 (as amended by the Notaries (Miscellaneous Provisions) Rules 2002) r 4. The commissary is appointed under the Ecclesiastical Licences Act 1533 s 3. The Master of the Court of Faculties may also direct that any matter which he is required to hear be heard by the commissary: see the Notarial Appeals and Hearing Rules 2000 r 7. As to the Master of the Faculties see PARA 1413.

3 As to the establishment of a panel of assessors see the Notarial Appeals and Hearing Rules 2000 r 3.

4 'Notary assessor' means an assessor who is a notary public: Notarial Appeals and Hearing Rules 2000 r 2.

5 Notarial Appeals and Hearing Rules 2000 r 5.1. 'Lay assessor' means an assessor who is not a notary public: r 2.

6 Notarial Appeals and Hearing Rules 2000 r 5.2.

7 Notarial Appeals and Hearing Rules 2000 r 8.1.

8 Notarial Appeals and Hearing Rules 2000 r 8.2.

UPDATE

1448-1454 Complaints and disciplinary procedures

Public Notaries (Conduct and Discipline) Rules 1993 replaced by Notaries (Conduct and Discipline) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/D. COMPLAINTS AND DISCIPLINARY PROCEDURES/(B) Disciplinary Proceedings/1453. Disciplinary proceedings and sanctions in the Court of Faculties.

1453. Disciplinary proceedings and sanctions in the Court of Faculties.

A complaint of notarial misconduct¹ may be made to the Court of Faculties² by any competent complainant³. Where the commissary and two assessors after hearing such a complaint find that it has been proved they may⁴:

- 675 (1) order that the notary be struck off the roll of notaries⁵;
- 676 (2) order that the notary be suspended from practice as a public notary for a specified period or until certain conditions have been met or indefinitely⁶;
- 677 (3) impose conditions as to the future scope or conduct of the notarial practice of the notary and direct that his practising certificate be endorsed or the endorsement on his solicitor's practising certificate be marked accordingly⁷; or
- 678 (4) order that the notary be admonished⁸.

In addition to the penalties listed in heads (2) to (4) above unless the notary indemnifies any client of his who is found to have suffered actual loss as a result of the notarial misconduct in question, and pays a penalty not exceeding £250 (or such higher sum as the Master of the Faculties⁹ may from time to time specify for these purposes) such penalty to be paid to whomsoever the Master may direct, the notary must be struck off the roll of notaries¹⁰.

It is also within the discretion of the commissary to order that the costs of either party to the complaint or the Court of Faculties be paid as he deems fit¹¹.

Special provision is made for solicitor notaries¹².

1 As to the meaning of 'notarial misconduct' see PARA 1449 note 2.

2 As to the Court of Faculties see PARA 1413.

3 Public Notaries (Conduct and Discipline) Rules 1993 r 8(a). As to the relevant procedure in the case of such a complaint see Schedule, Pt II. 'Competent complainant' means (1) a nominated notary; (2) the Incorporated Company of Scriveners or a member of that company nominated by it; or (3) any person who has been a client of the public notary in question where the complaint relates to notarial misconduct arising from notarial acts or other professional services performed by the public notary for that client: r 2. As to the meaning of 'nominated notary' see PARA 1450 note 3. As to the Incorporated Company of Scriveners see PARA 1416.

Where:

2185 (a) an allegation concerning the conduct or practice of a public notary has been received by the registrar of the Court of Faculties and he has not appointed a nominated notary to investigate the allegation or referred the allegation to the Incorporated Company of Scriveners (as the case may be) within 28 days of receiving the allegation; or

2186 (b) the registrar has appointed a nominated notary or referred the allegation to the Incorporated Company of Scriveners and the nominated notary or the Incorporated Company has determined not to make a complaint of notarial misconduct to the Court of Faculties in respect of the allegation or has not so made a complaint within 112 days of his appointment or the referral of the allegation (as the case may be),

then a complaint of notarial misconduct in respect of that allegation may be made to the Court of Faculties by any public notary who holds a notarial practising certificate and such public notary is deemed to be a competent complainant for these purposes: r 8(b).

4 Public Notaries (Conduct and Discipline) Rules 1993 r 9(a) (amended by virtue of the Notarial Appeals and Hearings Rules 2000 r 6). As to the Commissary and the assessors, see PARA 1452.

5 Public Notaries (Conduct and Discipline) Rules 1993 r 9(a)(i). As to the roll of notaries see PARA 1427.

6 Public Notaries (Conduct and Discipline) Rules 1993 r 9(a)(ii).

7 Public Notaries (Conduct and Discipline) Rules 1993 r 9(a)(iii).

8 Public Notaries (Conduct and Discipline) Rules 1993 r 9(a)(iv).

9 As to the Master of the Faculties see PARA 1413.

10 Public Notaries (Conduct and Discipline) Rules 1993 r 9(b).

11 See the Public Notaries (Conduct and Discipline) Rules 1993 r 9(c).

12 See the Public Notaries (Conduct and Discipline) Rules 1993 r 10, Schedule, Pt III.

UPDATE

1448-1454 Complaints and disciplinary procedures

Public Notaries (Conduct and Discipline) Rules 1993 replaced by Notaries (Conduct and Discipline) Rules 2009.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/6. NOTARIES/(1) THE OFFICE, APPOINTMENT AND SUPERVISION OF NOTARIES/(iii) Professional Practice and Conduct/D. COMPLAINTS AND DISCIPLINARY PROCEDURES/(B) Disciplinary Proceedings/1454. Application for review.

1454. Application for review.

Where a public notary:

- 679 (1) has been struck off the roll of notaries and a period of not less than 12 months has elapsed since the date of striking off¹;
- 680 (2) has been suspended from practice for a period exceeding 12 months or for an indefinite period and a period of not less than 12 months has elapsed since the date of the suspension²;
- 681 (3) has had conditions imposed as to the future scope or conduct of his notarial practice³; or
- 682 (4) has been struck off the roll of notaries and has since been restored to the roll of solicitors⁴,

he may petition the Court of Faculties⁵ to review the order⁶.

In the case of a petition under head (1), (2) or (4) above it is for the public notary to prove to the satisfaction of the court that circumstances have changed since the order was made and that it is not contrary to the public interest or the interest of the notarial profession that the order be reviewed⁷. In the case of a petition under head (3) above, it is for the public notary to prove to the satisfaction of the court that as a result of a change in circumstances the conditions imposed are no longer necessary or desirable in the public interest⁸.

On receiving such a petition brought under this rule by a notary⁹ the registrar of the court must appoint a nominated notary¹⁰ to act as respondent to the petition¹¹. The costs of the respondent to such a petition, and of the court, must be paid by the petitioner in any event¹². Upon hearing a petition brought under this rule the commissary and two assessors¹³ may order that the notary concerned be restored to the roll of notaries, that the suspension or the imposed conditions be lifted, impose such conditions or require such undertakings as he deems fit, or dismiss the petition¹⁴.

1 Public Notaries (Conduct and Discipline) Rules 1993 r 11(a)(i). This provision does not apply to proceedings under the Public Notaries (Conduct and Discipline) Rules 1993 r 10 (ie against solicitor notaries): see text and note 4.

2 Public Notaries (Conduct and Discipline) Rules 1993 r 11(a)(ii).

3 Public Notaries (Conduct and Discipline) Rules 1993 r 11(a)(iii).

4 Public Notaries (Conduct and Discipline) Rules 1993 r 11(a)(iv). This provision applies to proceedings brought against solicitor notaries under r 10: see PARA 1453.

5 As to the Court of Faculties see PARA 1413.

6 Public Notaries (Conduct and Discipline) Rules 1993 r 11(a). As to the procedure which applies to such a petition see Schedule, Pt IV.

7 Public Notaries (Conduct and Discipline) Rules 1993 r 11(b).

8 Public Notaries (Conduct and Discipline) Rules 1993 r 11(b).

9 Other than a scrivener notary: Public Notaries (Conduct and Discipline) Rules 1993 r 11(c)(ii). On receiving a petition brought by a scrivener notary the registrar must appoint the Incorporated Company of Scriveners to act as respondent to the petition: r 11(c)(iii). As to scrivener notaries see PARA 1416.

10 As to the meaning of 'nominated notary' see PARA 1450 note 3.

11 Public Notaries (Conduct and Discipline) Rules 1993 r 11(c)(ii).

12 Public Notaries (Conduct and Discipline) Rules 1993 r 11(c)(iv). Rule 9(c) applies in all other respects: see PARA 1453.

13 As to the commissary and the assessors see PARA 1452.

14 See the Public Notaries (Conduct and Discipline) Rules 1993 r 11(d) (amended by virtue of the Notarial Appeals and Hearings Rules 2000 r 6).

UPDATE

1448-1454 Complaints and disciplinary procedures

Public Notaries (Conduct and Discipline) Rules 1993 replaced by Notaries (Conduct and Discipline) Rules 2009.

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(2) FUNCTIONS AND NOTARIAL ACTS

(i) Functions

1455. Preparation of legal documents.

A notary is entitled: (1) to prepare deeds, agreements and wills relating to real and personal property situated in England and Wales; (2) to prepare deeds and other documents intended to take effect in the Commonwealth overseas and in foreign states in such form and language as may conform to the law of the place where the deed or document is intended to operate; (3) to verify, authenticate, and attest by his official seal the execution of deeds or other documents¹, contracts, and powers of attorney; (4) to prepare mercantile documents²; and (5) to certify copies, and to translate and verify the translation of documents in any foreign language into the English language, and vice versa³.

¹ In Scotland a notary may execute a will on behalf of a testator provided he has no interest in it: see *Gorrie's Trustee v Stiven's Executrix* 1952 SC 1.

² See **SHIPPING AND MARITIME LAW**.

³ A notary's functions are not defined by statute. The account of the functions given in the text is based on practice. Cf Ayliffe's Parergon 382; Brooke's Notary (12th Edn, 2002) para 2-01 et seq. A notarial act has been defined as the act of a notary authenticated by his signature and official seal, certifying the due execution in his presence of a deed, contract or other writing, or verifying some fact or thing of which the notary has certain knowledge: see Brooke's Notary (12th Edn, 2002) para 5-01.

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1456. Succession and conveyancing.

Notaries have the right to prepare any documentation required in connection with conveyancing or succession¹. This is often undertaken, especially by scrivener notaries, in conjunction with trans-national cases, where clients require advice which covers several jurisdictions².

As from a day to be appointed³ reserved instrument activities and probate activities are reserved legal activities for the purposes of the Legal Services Act 2007⁴ and a person may be authorised to carry on such activities by the Master of the Faculties⁵.

1 See the Solicitors Act 1974 ss 22-23 (prospectively repealed); and PARAS 592, 595-596.

2 See further Brooke's Notary (12th Edn, 2002) para 2-08.

3 The Legal Services Act 2007 ss 12, 13, Sch 4 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

4 See the Legal Services Act 2007 s 12; and PARA 512.

5 See the Legal Services Act 2007 Sch 4 para 1(2); and PARA 359. As to the Master of the Faculties see PARA 1413.

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1457. Bills of exchange.

It calls for a notary to be employed to present an inland or foreign bill of exchange for acceptance or payment. The clerk of the notary usually presents the bill¹.

If the bill is not accepted or paid, the notary 'notes' the bill. Subsequently the notary amplifies, or, as it is commonly called, 'extends', the noting by preparing, signing and sealing the protest². The notary's charges of noting and protesting a bill are recoverable as damages³.

¹ Thanks to the electronic transfer of funds, this role is falling into desuetude. See generally Brooke's Notary (12th Edn, 2002) ch 7.

² As to noting and protesting bills see the Bills of Exchange Act 1882 s 51; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1537 et seq.

³ See the Bills of Exchange Act 1882 s 57(1)(c); and **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 1602.

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1458. Ships' protests.

This branch of a notary's practice deals with the noting and drawing up of ships' protests¹.

The object of the protest is to exonerate the Master and mariners or person making the protest from any charge of improper, illegal or negligent conduct when damage or injury has happened to a ship or her cargo during a voyage, and to record formally any facts or circumstances relating to disputes or other matters which it is thought desirable to authenticate formally in order to exculpate the Master or mariners from any charge or complaint of illegal or improper action.

A 'note' of the protest is made in a book of the notary, stating the date, the name of the ship, the name of her Master and the voyage, and protests against the perils of the seas causing damage. The note may be amplified or 'extended'. The document, which is under the notary's seal, sets out a full statement of the material facts relating to any accident, collision, disaster or difficulty either to the ship or her cargo.

Protests are frequently drawn up which deal with the conduct of any person having business relations or duties in connection with the ship or her cargo for the purpose of putting on record in an authentic form all material facts². They are laid before underwriters, average adjusters and merchants for the purpose of adjusting losses on policies of marine insurance and settling disputes between ship-owner and cargo-owner, and for other business purposes.

¹ As to shipping generally see **SHIPPING AND MARITIME LAW**. The advent of containers has rendered this practice significantly less common. See generally Brooke's Notary (12th Edn, 2002) paras 9-30, 9-31.

² Protests are required in some foreign countries to support insurance claims.

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1459. Drawing bonds for payment.

In connection with the raising of money by foreign states or corporations on the security of an issue of numbered bonds which are redeemable at certain dates fixed at the time of issue by drawings, a notary is frequently employed to superintend the drawing by lot of the bond or bonds to be redeemed. He certifies the numbers of the bonds drawn. Today much of this process is performed by computer, rendering it simpler and faster than hitherto¹.

1 For an account of this practice see Brooke's Notary (12th Edn, 2002) ch 10.

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1460. Administering oaths and taking declarations.

Notaries are authorised to take statutory declarations in lieu of oaths¹. In particular they take declarations, oaths and affidavits relating to stamp and other duties². They may also take declarations in actions pending in any of Her Majesty's dominions³ beyond the seas relating to a debt where one of the parties is resident in Great Britain or Northern Ireland, or relating to real property situated in such dominions⁴. A notary may take a declaration by the attesting witness of a will, deed or other instrument or other competent person to prove its due execution⁵.

Until a day to be appointed every general notary has the powers conferred on a commissioner for oaths by the Commissioners for Oaths Acts 1889 and 1891⁶. Such a notary must not exercise these powers in a proceeding in which he is interested⁷. Such a notary before whom any oath or affidavit is taken or made must state in the jurat or attestation the place at which and the date on which the oath or affidavit is taken or made⁸. A document containing such a statement and purporting to be sealed or signed by such a notary must be admitted in evidence without proof of the seal or signature and without proof that he is such a notary⁹. Such notaries may use the title 'commissioners for oaths'¹⁰.

As from a day to be appointed¹¹ the administration of oaths is a reserved legal activity for the purposes of the Legal Services Act 2007¹² and a person may be authorised to carry on such activities by the Master of the Faculties¹³.

1 Statutory Declarations Act 1835 s 18 (amended by the Statute Law Revision (No 2) Act 1890; and the Perjury Act 1911 ss 17, 18, Schedule): see **CIVIL PROCEDURE** vol 11 (2009) PARA 1024.

2 Stamp Duties Management Act 1891 s 24; Revenue Act 1898 s 7(6). See **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) PARA 1110.

3 As to the meaning of 'Her Majesty's dominions' see **COMMONWEALTH** vol 13 (2009) PARA 707.

4 Statutory Declarations Act 1835 ss 15, 18 (s 15 amended by the Statute Law Revision Act 1890; and the Statute Law Revision Act 1892; s 18 amended by the Statute Law Revision (No 2) Act 1890; and the Perjury Act 1911 ss 17, 18, Schedule).

5 Statutory Declarations Act 1835 ss 16, 18 (s 16 amended by the Statute Law Revision (No 2) Act 1888; s 18 as amended: see note 4).

6 Courts and Legal Services Act 1990 s 113(4). Any reference to such a commissioner in an enactment or instrument includes a reference to such a member of the company unless the context otherwise requires: Courts and Legal Services Act 1990 s 113(4). See further PARA 577. As from a day to be appointed the Courts and Legal Services Act 1990 s 113 is repealed by the Legal Services Act 2007 Sch 21, paras 83, 96, Sch 23. At the date at which this volume states the law no such day had been appointed.

7 Courts and Legal Services Act 1990 s 113(5) (prospectively repealed: see note 6).

8 Courts and Legal Services Act 1990 s 113(6) (prospectively repealed: see note 6).

9 Courts and Legal Services Act 1990 s 113(7) (prospectively repealed: see note 6).

10 Courts and Legal Services Act 1990 s 113(10) (prospectively repealed: see note 6).

11 The Legal Services Act 2007 ss 12, 13, Sch 5 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

12 See the Legal Services Act 2007 s 12; and PARA 512.

13 See the Legal Services Act 2007 Sch 4 para 1(2); and PARA 389. For transitional provisions see PARA 1412.

UPDATE

1460 Administering oaths and taking declarations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

TEXT AND NOTES 6-13--Day appointed for the purpose of these provisions is 1 January 2010: SI 2009/3250.

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(ii) Notarial Acts

1461. Authentic acts.

There are two basic types of notarial act: those in private form, and those in public or notarial form. The private form is where the notary appends a form of authentication to a document, thus converting it into a notarial act. This is the most common form used by English notaries. The public form is an act drawn up as a narrative by the notary, setting out the identity of the parties, the matters which they wish to have recorded, and the fact that they have been made aware of the contents of the act. This is the format which is generally used by civil law notaries¹.

A notarial act or instrument may be received in evidence without further proof as duly authenticated in accordance with the requirements of law unless the contrary is proved².

1 For a more detailed explanation see Brooke's Notary (12th Edn, 2002) ch 5.

2 CPR 32.20 (added by SI 2005/2292).

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1462. Foreign notaries.

Greater weight is given to the protests and notarial acts of foreign notaries and of notaries practising in the Commonwealth overseas¹; thus the dishonour of a foreign bill presented abroad may be proved by producing a protest under the seal of a notary².

Furthermore, a document which has been formally drawn up or registered as an authentic instrument and is enforceable in certain states³ is, subject to the document not being contrary to public policy, directly enforceable in the United Kingdom, and vice versa⁴.

1 Thus judicial notice is taken of the seal or signature of a notary verifying an affidavit sworn abroad (Commissioners for Oaths Act 1889 s 3; *Cole v Sherard* (1855) 11 Exch 482), or a power of attorney executed abroad (*Hayward v Stephens* (1866) 36 LJCh 135) or in the colonies (*Re Goss' Estate* (1866) 12 Jur NS 595; *Hutcheon v Mannington* (1802) 6 Ves 823; *Ex p Worsley* (1793) 2 Hy Bl 275; *Omealy v Newell* (1807) 8 East 364), and an affidavit verifying the signature of the notary is unnecessary (*Re Eastern United Assurance Corp'n Ltd* [1928] WN 117); but when an affidavit is taken abroad before a notary authorised to administer oaths, then his signature must be verified (*Re Davis's Trusts* (1869) LR 8 Eq 98), although the rule has been relaxed where the fund was small (see *Mayne v Butler* (1864) 13 WR 128; cf *Brooke v Brooke* (1881) 17 ChD 833). Where several pieces of paper appear to constitute one document which is notarially verified it is not essential that each separate piece should be initialled: *Hamel v Panet* (1876) 2 App Cas 121, PC. See also **CIVIL PROCEDURE** vol 11 (2009) PARA 790.

2 *Chesmer v Noyes* (1815) 4 Camp 129.

3 In a contracting state of the Brussels and Lugano Conventions: see the Civil Jurisdiction and Judgments Act 1982 s 1(1), (3); and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARAS 68, 69.

4 See art 50 of each of the Brussels and Lugano Conventions on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels on 27 September 1968, and Lugano on 16 September 1988; and **CONFLICT OF LAWS** vol 8(3) (Reissue) PARA 187.

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7. LEGAL EXECUTIVES

(1) APPOINTMENT AND PRACTICE

1463. In general.

A legal executive¹ is a lawyer whose qualifications are recognised by the Institute of Legal Executives ('ILEX')². He may practise in contentious as well as non-contentious areas of law, performing many of the roles of a qualified solicitor, either in private practice or in public administration, and typically specialising in a particular area of practice³. Qualifying as a legal executive can also act as a route to qualification as a solicitor⁴. Legal executives are permitted to act as commissioners for oaths⁵.

Additionally, a fellow of ILEX confirmed as being of good standing and having been admitted as a fellow for not less than three years may authorise a withdrawal from his law firm's client account by signing specific authority⁶, and is eligible for membership of the Solicitors Regulation Authority's personal injury accreditation scheme⁷.

1 Only a fellow of the Institute of Legal Executives ('ILEX') is entitled to describe himself as a legal executive: see the Articles of Association of the Institute of Legal Executives, art 6.A. As to qualification as a fellow see PARA 1468. As to the Articles of Association see PARA 1464 note 1.

2 As to ILEX see PARA 1464.

3 Until a day to be appointed ILEX is an authorised body for the purposes of rights of audience and the conduct of legislation under the Courts and Legal Services Act 1990: see ss 27, 28 (see PARAS 497, 498); and the Institute of Legal Executives Order 1998, SI 1998/1077. As from a day to be appointed ILEX is an approved regulator for the purposes of rights of audience under the Legal Services Act 2007: see Sch 4, para 1(1); and PARA 358 et seq. At the date at which this volume states the law no such day had been appointed.

ILEX is a qualifying regulator for the purposes of the Immigration and Asylum Act 1999: see the Legal Services Act 2007 Sch 18 para 2; and **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM**. A legal executive employed by a solicitor's practice is a specified person for the purposes of compromise agreements under the Disability Discrimination Act 1995 Sch 3A, para 2(3)(d): see the Compromise Agreements (Description of Person) Order 2005, SI 2005/2364; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 613.

ILEX may award a relevant qualification for the purposes of the judicial appointment eligibility condition under the Tribunals, Courts and Enforcement Act 2007: see ss 50-52; and **COURTS**.

For further discussion of the range of work in which a legal executive may engage, see the ILEX website at www.ilex.org.uk on the date at which this volume states the law.

4 See PARA 1470.

5 Until a day to be appointed ILEX is an authorised body for the purposes of the Courts and Legal Services Act 1990 s 113 (see PARA 577): see the Commissioners for Oaths (Prescribed Bodies) Regulations 1995, SI 1995/1676. As from a day to be appointed ILEX is an approved regulator for the purposes of the administration of oaths: see the Legal Services Act 2007 Sch 4 para 1(1). At the date at which this volume states the law no such day had been appointed. During the transitional period, a person authorised by ILEX to practise as a member of the profession is deemed to be authorised to administer oaths, in accordance with and subject to the regulatory arrangements of ILEX, and provided the person has in force a certificate authorising him to practise as a legal executive: see Sch 5 para 10. As to the meaning of 'transitional period' see PARA 516 note 9.

6 See the Solicitors' Accounts Rules 1998 r 23(1)(b); and PARA 841.

7 This is subject to the condition that the fellow must have passed the civil litigation and tort examination papers: see generally the Solicitors Regulation Authority Personal Injury Accreditation Scheme Criteria and guidance notes, available at the date on which this title states the law on the Authority's website at www.sra.org.uk. As to the Authority see **PARA 619**.

UPDATE

1463 In general

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) **PARA 733**. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) **PARA 196A**.

NOTE 3--Day appointed is 1 January 2010: SI 2009/3250.

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1464. ILEX.

The Institute of Legal Executives ('ILEX') was founded in 1963 as the professional body that represents legal executives, although its origins date back to 1928 with the incorporation of the Solicitors' Managing Clerks Association whose council and articles of association were carried over by the institute¹.

ILEX was established, inter alia, to provide an organisation for persons resident in England and Wales or elsewhere who are:

- 683 (1) fellows of ILEX²;
- 684 (2) registered with ILEX and provide or are employed in providing legal services of any kind ancillary to legal services³; or
- 685 (3) registered with ILEX for the purpose of studying or becoming qualified in law or other subjects provided by ILEX⁴,

and to advance and protect the status and interests of all such persons⁵. The other objects of the institute may be summarised as follows:

- 686 (a) to promote professional unity, co-operation and mutual assistance amongst persons employed in the legal profession or employed in legal work⁶;
- 687 (b) to promote and secure professional standards of conduct amongst its members⁷;
- 688 (c) to provide for the education, training and development of those who wish to become proficient in the law in all subjects and skills⁸;
- 689 (d) to give and award diplomas, certificates, prizes, scholarships, bursaries and other awards to persons showing proficiency in the law and other subjects⁹;
- 690 (e) to establish trust funds, bursaries and scholarships and to make payments out of institute funds to promote the educational or professional advancement of legal executives¹⁰;
- 691 (f) to prepare, publish, acquire, distribute or disseminate books, papers, periodicals or any information relating to law and legal practice or any other subject relative to the education and training provided by ILEX¹¹;
- 692 (g) to establish, maintain and control branches of ILEX, and to determine and modify their constitutions, rights, privileges, obligations and duties¹²;
- 693 (h) to provide financial assistance or relief to members, ex-members or their dependants in distressed circumstances¹³;
- 694 (i) to carry out any other lawful trade or business whatsoever which can in the opinion of the council of ILEX¹⁴ or the governing body be carried out advantageously to ILEX¹⁵.

Ilex has, subject to certain restrictions, extensive powers to engage in financial and business activity, to accept grants and donations, and to borrow, raise or invest money in order to further these objects¹⁶.

1 The current Memorandum and Articles of Association which constitute ILEX as a company limited by guarantee and not having a capital divided into shares were adopted on 16 July 1999 and amended by special resolutions passed on 20 July 2001, 23 July 2004, 15 July 2005, 2 June 2006 and 16 September 2006.

2 See the Memorandum of Association of the Institute of Legal Executives para 3.1.1.

3 See the Memorandum of Association of the Institute of Legal Executives para 3.1.2.

4 See the Memorandum of Association of the Institute of Legal Executives para 3.1.3.

5 See the Memorandum of Association of the Institute of Legal Executives para 3.2.

6 See the Memorandum of Association of the Institute of Legal Executives para 3.3.

7 See the Memorandum of Association of the Institute of Legal Executives para 3.4.

8 See the Memorandum of Association of the Institute of Legal Executives para 3.5.

9 See the Memorandum of Association of the Institute of Legal Executives para 3.6.

10 See the Memorandum of Association of the Institute of Legal Executives para 3.7.

11 See the Memorandum of Association of the Institute of Legal Executives para 3.8.

12 See the Memorandum of Association of the Institute of Legal Executives para 3.9.

13 See the Memorandum of Association of the Institute of Legal Executives para 3.10.

14 As to the council of ILEX see PARA 1465.

15 See the Memorandum of Association of the Institute of Legal Executives para 3.11.

16 See the Memorandum of Association of the Institute of Legal Executives para 4-8. ILEX must keep accounts of its dealings: see para 12. For provision as to any property that remains following the winding up or dissolution of ILEX see para 11.

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1465. The council of ILEX.

The business of the Institute of Legal Executives ('ILEX')¹ is managed by a council² which constitutes the board of directors of ILEX and may exercise all of its powers³. The council may (subject as otherwise provided by these articles⁴) delegate any of its powers⁵ to:

- 695 (1) the chief executive⁶; or
- 696 (2) any committee consisting of two or more members of the council⁷.

It may make, alter or rescind bye-laws to enable it to manage ILEX⁸.

The council must consist of not more than 27 fellows⁹ elected as constituency members¹⁰ and six fellows appointed as co-opted members¹¹. It must appoint a president, vice-president and vice-president elect from its constituency members¹². Provision is made with regard to the appointment and retirement of members of the council¹³, council proceedings¹⁴, and other matters¹⁵.

1 As to ILEX see PARA 1464.

2 Subject to any relevant statutory provisions, and the Memorandum and Articles of Association: art 66. As to the ILEX Memorandum and Articles of Association see PARA 1464 note 1.

3 Articles of Association of the Institute of Legal Executives art 66. The powers given by art 66 may not be limited by any special power given to the council by any other Article: art 66.

4 Any such delegation may be made subject to any conditions which the council may impose, and either collaterally with or to the exclusion of its own powers, and may be revoked or altered: Articles of Association of the Institute of Legal Executives art 68.

5 The council may not delegate the power to make, alter or rescind bye-laws: Articles of Association of the Institute of Legal Executives art 68.

6 Articles of Association of the Institute of Legal Executives art 68(i). The council may appoint any person (not being a member of the council) to be the chief executive (formerly the secretary general) of ILEX on such terms and for such period as the council thinks fit. The chief executive is entitled to attend and speak at all meetings of the council, unless the council resolves otherwise, but the chief executive must not be counted in the quorum or vote at any council or committee meeting: art 81.

7 Articles of Association of the Institute of Legal Executives art 68(ii). Subject to any conditions imposed by the council, the proceedings of every committee are governed by the provisions of these articles regulating the proceedings of the council so far as they are capable of applying, and the president and the vice-president are entitled to attend and vote as members of every committee: art 68.

8 See the Articles of Association of the Institute of Legal Executives art 67.

9 As to fellows of ILEX see PARA 1468.

10 For these purposes England and Wales are divided into 12 constituencies, the boundaries of which are determined from time to time by the council. Each constituency must be represented by one or more constituency members, that number to be determined from time to time by the council: Articles of Association of the Institute of Legal Executives art 47(B). As to eligibility as a constituency member see art 48.

11 See the Articles of Association of the Institute of Legal Executives art 47(A). One of the co-opted members may be a fellow who is qualified as a solicitor: art 47(A). The council must make arrangements for the co-option of fellows to serve on the council and has the power to determine the criteria on which fellows are to

be co-opted: art 47(C). Co-opted members have the same status, rights and privileges as constituency members: art 47(D).

12 See the Articles of Association of the Institute of Legal Executives art 64.

13 See the Articles of Association of the Institute of Legal Executives arts 50-63.

14 See the Articles of Association of the Institute of Legal Executives arts 69-79.

15 Eg minutes (see the Articles of Association of the Institute of Legal Executives art 80); the appointment of a company secretary (see art 82); the seal (see art 83); notice in writing (see arts 84-87); and indemnity (see art 88).

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1466. ILEX Professional Standards Ltd.

As from a day to be appointed¹, the Institute of Legal Executives ('ILEX')² is an approved regulator³ for the purposes of the Legal Services Act 2007⁴. As such the Legal Services Board⁵ has a statutory duty to ensure that ILEX's representative functions do not interfere with its regulatory functions, and that decisions relating to the exercise of each category are taken, as far as possible, independently of one another⁶. To this end, ILEX has formed ILEX Professional Standards Ltd, a ring-fenced subsidiary responsible for regulating the profession, appointing its first chairman with effect from 1 June 2008⁷.

1 The Legal Services Act 2007 s 20, Sch 4 are brought into force by order made by the Lord Chancellor under s 211(2). At the date at which this volume states the law no such day had been appointed.

2 As to ILEX see PARA 1464.

3 As to the meaning of 'approved regulator' see PARA 358.

4 Ie under the Legal Services Act 2007 s 20, Sch 4 para 1; and PARA 359 et seq.

5 As to the Legal Services Board see PARA 303.

6 See the Legal Services Act 2007 ss 29, 30; and PARAS 373, 374.

7 See the ILEX Media Release dated 28 May 2008: *ILEX Appoints Regulation Board Chair*.

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1467. Branches of ILEX.

The council of the Institute of Legal Executives ('ILEX')¹ may make bye-laws to establish and constitute branches of the institute². It may then agree such changes in the regulations of individual branches as it thinks fit³, and has the power to make payments to support and assist them in carrying out their functions⁴.

1 As to the council of the ILEX see PARA 1465.

2 See the Articles of Association of the Institute of Legal Executives art 21(A). Every branch must be established and constituted by deed: see art 21(A). As to the ILEX Memorandum and Articles of Association see PARA 1464 note 1.

3 See the Articles of Association of the Institute of Legal Executives art 21(B).

4 See the Articles of Association of the Institute of Legal Executives art 21(C).

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1468. Membership of ILEX.

The membership of the Institute of Legal Executives ('ILEX')¹ comprises fellows², registered immigration advisers³, and any additional grade created by the council of ILEX⁴. A person is eligible to be admitted as a fellow if he is able to satisfy the council that he has the requisite qualifications and experience, and that he has satisfied any other of the council's requirements in respect of fitness for admission as a fellow⁵. Once admitted every fellow is entitled to receive a certificate showing that he is a fellow; and to describe himself as such⁶.

A registered immigration adviser must be granted the authority to be a qualified person⁷ if he is able to satisfy the council that he has the requisite qualifications, skills and experience to provide immigration advice or services and provided that he has satisfied the council regarding his fitness to be granted such authority⁸.

The council's decision whether or not to admit an applicant for admission as a fellow or registration as an immigration adviser is final and binding⁹, and it may in its discretion refuse to enrol or admit an applicant as a fellow or to register any person although he is otherwise eligible for admission or registration; and permit a person to be admitted or registered although he is not otherwise eligible¹⁰. The council also has the power to award designatory letters and status descriptions to fellows, registered persons and others even though they are not members of ILEX¹¹.

Membership of ILEX is not be transferable or transmissible¹².

A fellow or registered immigration adviser immediately ceases to be such¹³ if:

- 697 (1) he resigns by giving notice in writing to ILEX¹⁴;
- 698 (2) he dies¹⁵;
- 699 (3) he fails to pay the whole or any part of any fee or other sum payable by him for a period of 12 months from the date on which it became due and the council resolves that he ceases to be a fellow or registered immigration adviser¹⁶;
- 700 (4) he is guilty of conduct which makes him unfit to be a fellow or registered person, or commits a breach of the articles of association of ILEX or of the bye-laws and an order is made by the disciplinary body excluding him from membership or cancelling his registration¹⁷.

The council must make rules to deal with fellows or registered persons whose ability to practise is or is suspected of being seriously impaired, and subject to those rules the council may suspend a fellow or registered person from membership¹⁸.

1 As to ILEX see PARA 1464.

2 As to fellows of ILEX see text and notes 5-6.

3 I.e. a person with current authority granted by the council of ILEX to be a qualified person for the purposes of the Immigration and Asylum Act 1999 s 84(2): see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) PARA 170.

4 See the Articles of Association of the Institute of Legal Executives art 2. The council has powers to set and levy enrolment fees and membership subscriptions: see arts 10-17.

A person wishing to register with ILEX may, at the time this volume states the law, be registered in any of the following grades, subject to complying with the relevant criteria: student; legal accounts student; associate; member; legal accounts member (ie a person who has passed the Legal Accounts Examination); legal accounts executive: see the Membership Requirement Bye-laws (23 September 2005) paras 2, 4. Everyone who is registered with ILEX, in whatever grade, will be bound by the provisions of the Articles of Association, and by the bye-laws and regulations made under the Articles: Membership Requirement Bye-laws (23 September 2005) para 3.

As to the council see PARA 1465. As to the ILEX Memorandum and Articles of Association see PARA 1464 note 1.

5 See the Articles of Association of the Institute of Legal Executives art 3(A)(i). The council must publish bye-laws setting out the conditions for admission: art 3(A)(ii). An application to be admitted as a fellow must be in the prescribed form, and the council may call for evidence as to the qualifications and experience and fitness to be a fellow of any person seeking to be so admitted: see art 4. Generally, to achieve full qualification as a fellow, a member of ILEX (see note 4) must have five years' qualifying employment under the supervision of a solicitor, including two years after the successful completion of the academic requirements: see the Membership Requirement Bye-laws (23 September 2005) para 5; and PARA 1469.

6 See the Articles of Association of the Institute of Legal Executives art 6(A). The designatory letters are 'F.Inst.L.Ex.': see art 6(A).

7 He qualified for the purposes of the Immigration and Asylum Act 1999 s 84(2): see **BRITISH NATIONALITY, IMMIGRATION AND ASYLUM** vol 4(2) (2002 Reissue) para 170.

8 See the Articles of Association of the Institute of Legal Executives art 3(B)(i). The council must publish bye-laws setting out the conditions under which such authority is granted: see art 3(B)(ii). It has the power to decide the requirements for a person to be registered with ILEX as a registered person: art 5.

9 See the Articles of Association of the Institute of Legal Executives art 5.

10 See the Articles of Association of the Institute of Legal Executives art 5.

11 See the Articles of Association of the Institute of Legal Executives art 7.

12 See the Articles of Association of the Institute of Legal Executives art 8.

13 As to liabilities etc upon cessation of membership see the Articles of Association of the Institute of Legal Executives art 20.

14 See the Articles of Association of the Institute of Legal Executives art 18A(i). No such resignation is valid if a complaint has been received about the person concerned, or any proceedings against that person have been begun by any disciplinary body, until the final determination of the matter by the relevant disciplinary bodies (and the expiration of any time allowed for appeals therefrom): art 18A. As to disciplinary bodies see para 1472.

15 See the Articles of Association of the Institute of Legal Executives art 18A(ii).

16 See the Articles of Association of the Institute of Legal Executives art 18A(iii).

17 See the Articles of Association of the Institute of Legal Executives art 18A(iv).

18 See the Articles of Association of the Institute of Legal Executives art 18B.

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(2) TRAINING AND QUALIFICATIONS

1469. Training and qualifications.

The council of the Institute of Legal Executives ('ILEX')¹ has the power to make bye-laws to regulate the provision of tests of knowledge and assessments of competence for those seeking to obtain qualifications offered by ILEX or by any subsidiary or associated company, and for those seeking to be admitted as fellows².

In general a person intending to qualify as a legal executive will pursue the necessary academic qualifications while working under a solicitor or other qualified person.

The ILEX professional qualification begins at A-level equivalence with the Level 3 Certificate in Law and Practice, from which follows the Professional Diploma in Law and Practice, providing a broad grounding in the subject³. At degree level equivalence, the Level 6 Professional Higher Diploma in Law allows for a specialist study, selected to match the student's professional work⁴. Upon successful completion of the level 6 examinations, the student may apply to become a full member of ILEX⁵.

A member may then be admitted as a fellow if he is in qualifying employment⁶ and has been so employed for an aggregate of five years or more, with at least two consecutive years immediately prior to making the application⁷.

ILEX members may also attend an advocacy skills course and upon successful completion apply for certificates in civil, criminal and family proceedings, with which a member is entitled to practise as a Legal Executive Advocate⁸.

1 As to the council see PARA 1465; as to ILEX see PARA 1464.

2 Articles of Association of the Institute of Legal Executives art 9. As to the Articles of Association see PARA 1464 note 1.

3 See the Level 3 Certificate in Law and Practice and the Level 3 Professional Diploma in Law and Practice - Qualifications Handbook, available on the ILEX website (www.ilex.org.uk at the date at which this volume states the law). These qualifications were introduced in September 2008 and replace the outgoing Level 3 Professional Diploma in Law.

4 See the Level 6 Professional Higher Diploma in Law - Student Handbook, available on the ILEX website (www.ilex.org.uk at the date at which this volume states the law). The Level 6 diploma is currently under review and is due to be replaced in September 2009.

5 See the Membership Requirement Bye-laws (23 September 2005) paras 4.

6 A person is in qualifying employment if he is employed: (1) by a solicitor or a firm of solicitors in private practice; (2) by a Licensed Conveyancer or a firm of Licensed Conveyancers; or (3) by any firm, corporation, undertaking, department or office where the employment is subject to supervision by a fellow, solicitor, barrister or licensed conveyancer employed in duties of a legal nature by that firm, corporation, undertaking, department or office; and in each case, his duties under the terms of his employment are wholly or principally of a legal nature rather than of an administrative nature: see the Membership Requirement Bye-laws (23 September 2005) para 6.1. Further provision is also made with regard to qualifying employment: see the Membership Requirement Bye-laws (23 September 2005) paras 6.2-6.7.

7 See the Membership Requirement Bye-laws (23 September 2005) paras 5.1(1)-(3). He must also: (1) have paid all subscriptions and other fees payable by him to ILEX, or have made arrangements for payment; (2) provide a certificate signed by the fellow, solicitor, barrister or licensed conveyancer, or at the discretion of the

council of ILEX any other person, who supervises his work or by whom he is employed, which confirms the nature of his duties and that he is competent to be a fellow; (3) satisfy any other requirements of the council in respect of fitness to be admitted as a fellow; (4) agree to become a member of ILEX; and (5) accept any obligations imposed on him by the Articles of Association or the council's bye-laws: see the Membership Requirement Bye-laws (23 September 2005) para 5.1(4)-(8). A person who has been admitted as a fellow but whose membership has lapsed may be eligible for re-admission as a fellow: see para 5.2. As to the council see PARA 1465; and as to the Articles see PARA 1464 note 1.

8 See the Courts and Legal Services Act 1990 s 27 (as prospectively repealed: see PARA 1464 note 3); and the Institute of Legal Executives Rights of Audience Qualification Scheme Guidelines for Candidates Completing an Application for a Certificate of Eligibility (available at www.ilex.org.uk at the date at which this volume states the law).

The rights of audience are as follows (see the Institute of Legal Executives Rights of Audience Qualification Scheme Guidelines for Candidates Completing an Application for a Certificate of Eligibility):

- 2187 (1) under a Civil Proceedings Certificate a legal executive advocate is entitled (a) to appear in open court in the county court in all actions, except family proceedings; (b) to appear before justices or a district judge (magistrates' court) in the magistrates' courts in relation to all matters originating by complaint or application, including applications under the licensing, betting and gaming legislation; (c) to appear before any tribunal under the supervision of the Council on Tribunals where the tribunal rules provide for a non-discretionary right of audience being available to barristers and solicitors; (d) to appear before coroners' courts in respect of all matters determined by those courts and to exercise rights of audience similar to those exercised by solicitors and barristers;
- 2188 (2) under a Family Proceedings Certificate a legal executive advocate is entitled (a) to appear in court (including in open court) in all county court family proceedings; (b) to appear before justices or a district judge (magistrates' court) in the family proceedings courts; (c) to appear before coroners' courts in respect of all matters determined by those courts, and to exercise rights of audience similar to those exercised by solicitors and barristers;
- 2189 (3) under a Criminal Proceedings Certificate a legal executive advocate is entitled (a) to appear before justices or a district judge (magistrates' court) in all adult magistrates' courts in relation to all matters within that court's criminal jurisdiction; (b) to appear before justices or a district judge (magistrates' court) in all youth courts in relation to all matters within that court's criminal jurisdiction; (c) to appear in the Crown Court or High Court before a judge in chambers to conduct bail applications; (d) to appear in the Crown Court on appeal from the magistrates' court, the youth court or on committal of an adult for sentence or to be dealt with, if he, or any solicitor by whom he is employed or any other solicitor or fellow in the same employment as him, appeared on behalf of the defendant in the magistrates' court or youth court; (e) to appear before coroners' courts in respect of all matters determined by those courts, and to exercise rights of audience similar to those exercised by solicitors and barristers.

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1470. Legal executives qualifying as solicitors.

A Fellow of the Institute of Legal Executives ('ILEX')¹ who has satisfied the Solicitors Regulations Authority² of completion of the academic stage of training³ is not required to serve under a training contract if (1) he has satisfactorily completed a legal practice course⁴ or an integrated course⁵; (2) he has been either continuously engaged in the practice of the law since qualifying as a fellow of the institute before attending that course or he satisfies the Authority that, although those requirements are not met, he has experience in the practice of the law since qualifying as a fellow of the institute that is sufficiently recent to justify him not being required to serve under a training contract⁶; and (3) he has satisfactorily completed a professional skills course⁷.

A member of ILEX who has three years' qualifying employment and who has satisfactorily completed the professional qualifications of ILEX which give exemption from the common professional examination⁸ may commence a legal practice course on either a full or part time basis⁹, upon the successful completion of which he must serve a two year training contract¹⁰.

1 As to ILEX see PARA 1464.

2 The Training Regulations 1990 refer to the 'Society' (ie the Law Society; see reg 2(3)). However in practice the body currently responsible for the training of solicitors is the Solicitors Regulation Authority (see PARA 619).

3 As to the academic stage of training see PARAS 646-647.

4 As to the legal practice course see PARA 649.

5 As to the meaning of 'integrated course' see PARA 644 note 5.

6 As to training contracts see PARA 651 et seq.

7 Training Regulations 1990 reg 29(1). As to the Training Regulations see PARA 638 note 5. As to the professional skills course see PARA 650.

8 As to the common professional examination see PARA 647.

9 Law Society Training Regulations 1990 reg 29(2)(i).

10 Law Society Training Regulations 1990 reg 29(2)(ii).

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(3) PROFESSIONAL CONDUCT

1471. Professional conduct.

Persons enrolling as members of the Institute of Legal Executives ('ILEX')¹ become bound by its Memorandum and Articles of Association and therefore must support the aims and objects of the institute and uphold the standards of professional practice prescribed in the Code of Conduct².

A member, in his professional life and employment, must conduct himself and the matters of which he has conduct, in such a manner as (1) to avoid any action or situation which may bring disrepute upon the institute or its members³; (2) to avoid doubt being cast upon his own professional integrity⁴; (3) will assist the impartial administration of justice⁵; (4) will recognise that the interests of the client are paramount to those of all others⁶. A member must also have regard to the Guides to Good Practice⁷ issued from time to time by the institute⁸.

A member must not (a) misuse the trust reposed in him nor reveal confidential information other than to those entitled to receive it⁹; (b) for the personal gain of himself or his family take advantage of information gained in the course of his conduct of any matter¹⁰; (c) hold himself out as a legal executive nor display the relevant distinguishing letters¹¹ after his name unless that member is in good standing as a fully paid-up fellow entered in the register of members of the institute¹²; or (d) directly or indirectly discriminate against any person, nor victimise or harass them on grounds of their age, gender, disability, race, colour, ethnic or national origin, sexual orientation, marital or family status¹³.

The Code of Conduct also provides that a member must at all times work within the framework of the law and use his best endeavours to avoid any breach of the law by his employer or the client¹⁴.

1 As to ILEX see PARA 1464.

2 See the Introduction to the ILEX Code of Conduct and Supporting Guides to Good Practice (available on the ILEX website at www.ilex.org.uk on the date at which this volume states the law).

3 Code of Conduct of ILEX para 1(i).

4 Code of Conduct of ILEX para 1(ii).

5 Code of Conduct of ILEX para 1(iii).

6 Code of Conduct of ILEX para 1(iv).

7 The Guides to Good Practice for the Legal Executive are published by ILEX and set out the procedure for giving good service to clients. They are not absolute rules and may be departed from if the law or professional obligations require: see generally the Guide to Good Practice for the Legal Executive.

8 Code of Conduct of ILEX para 1.

9 Code of Conduct of ILEX para 2(i).

10 Code of Conduct of ILEX para 2(ii).

11 I.e. the letters 'F.Inst.L.Ex.': see the Code of Conduct of ILEX para 2(iii).

- 12 Code of Conduct of ILEX para 2(iii).
- 13 Code of Conduct of ILEX para 2(iv).
- 14 Code of Conduct of ILEX para 3.

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1472. Disciplinary bodies.

The council of the Institute of Legal Executives ('ILEX')¹ must establish such disciplinary, appeals and investigative committees and tribunals as it sees fit and from time to time make rules setting out their constitution, powers, functions and membership². Such bodies have the power to order that a member³ be excluded from membership or his registration be cancelled or, alternatively, that he be reprimanded or admonished⁴.

They may, additionally, order a member to pay a fine, costs to ILEX in respect of the proceedings it has brought against him, a sum to a complainant as compensation, or all three, and also have power to order ILEX to make a payment to a fellow or registered person by way of compensation or to meet his costs in defending the proceedings brought against him⁵.

The council may delegate to any subsidiary company of ILEX any or all of its powers relating to the regulation of professional conduct including (but not limited to) disciplinary matters and the right to charge fees in respect of such activity⁶.

1 As to the council see PARA 1465; as to ILEX see PARA 1464.

2 Articles of Association of the Institute of Legal Executives art 19A. The council has made the Investigation, Disciplinary and Appeals Rules 2008 (31 July 2008), which set out the constitution and functions of the Investigating and Appeals Committees (see PARA 1473), and the Disciplinary and Appeals Tribunals (see PARA 1474). As to the Articles of Association see PARA 1464 note 1.

3 Ie a fellow of ILEX or a registered person: see PARA 1468.

4 Articles of Association of the Institute of Legal Executives art 19B(i). The disciplinary bodies may determine the duration of any period of exclusion from membership: art 19B(i).

5 Articles of Association of the Institute of Legal Executives art 19B(ii). The council must determine from time to time the maximum amount of any fine or award of costs which may be ordered by the disciplinary bodies: art 19B(iii). At the date of adoption of this article, the maximum amount which the disciplinary bodies may order to be paid as a fine or as costs is £3,000: art 19B(iii).

6 Articles of Association of the Institute of Legal Executives art 18C.

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1473. The Investigating and Appeals Committees.

The Investigating Committee¹ is charged with considering:

- 701 (1) complaints² against members³;
- 702 (2) declarations of prior conduct⁴ by members or persons applying to be members⁵;
- 703 (3) whether a member has been guilty of any misconduct or has breached the Institute's Articles of Association, bye-laws or regulations⁶, whether or not a complaint has been made against the member by a third party⁷;

and what, if any, action should be taken or penalty should be imposed as a result⁸.

A complaint made against a member must be sent to the Institute of Legal Executives ('ILEX')⁹ on the appropriate complaint form¹⁰. ILEX must then appoint an investigating practitioner¹¹ or an officer¹² to make preliminary inquiries¹³. A copy of the complaint must also be sent to the member for their response to the allegations¹⁴. Once all the information has been gathered a summary of the issues is prepared and the matter is put to the Investigating Committee¹⁵.

The Investigating Committee has the power to:

- 704 (a) accept the member's response to a complaint, allegation or issue of potential misconduct and decide to take no further action in relation to it¹⁶;
- 705 (b) decide that the complaint, allegation or issue of potential misconduct concerns matters beyond the jurisdiction of ILEX¹⁷;
- 706 (c) call for further information or evidence¹⁸;
- 707 (d) request the member to provide references from employers or others as to his character and professional conduct¹⁹;
- 708 (e) defer a decision so that legal advice may be taken²⁰;
- 709 (f) request a member to give undertakings as to his future conduct²¹;
- 710 (g) impose conditions on a member in respect of his conduct or in regard to his employment that it may think appropriate²²;
- 711 (h) reject a complaint, allegation or issue of potential misconduct²³;
- 712 (i) admonish, reprimand or warn the member as to his future conduct²⁴;
- 713 (j) refer the matter to the Disciplinary Tribunal²⁵.

ILEX must notify the member concerned and the complainant of the decision taken, and, unless the matter has been referred to the Disciplinary Tribunal, the member may then appeal against it within 15 days of notification²⁶. An appeal is heard by the Appeals Committee²⁷ which may confirm or vary the decision or refer the matter back to the Investigating Committee for further consideration²⁸.

1 The Investigating Committee is established under the Investigation, Disciplinary and Appeals Rules 2008 r 1(1), (2). It is made up of nine members, six members of the council and three lay members: r 11(1). A minimum of five members (at least one of whom is lay) are required for a quorum, and the committee must meet regularly throughout the year: r 11(2)-(5). As to the appointment of members and officers see rr 12-15; and as to the conduct of meetings see rr 36-38. Certain matters may be resolved without a meeting: see rr 39, 40. 'Lay member' means a lay person who has been appointed by the ILEX council to serve on the committee: r 9. As to the council see PARA 1465.

2 'Complaint' means any document, communication or record of conversation setting out matters of complaint against a member: Investigation, Disciplinary and Appeals Rules 2008 r 9.

3 Investigation, Disciplinary and Appeals Rules 2008 r 10(a). 'Member' means a person registered with ILEX at any grade: r 3. As to membership see PARA 1468.

4 The following matters constitute prior conduct:

2190 (1) any prior conviction recorded against him (subject to the provisions of the Rehabilitation of Offenders Act 1974 (see **SENTENCING AND DISPOSITION OF OFFENDERS** vol 92 (2010) PARA 660 et seq));

2191 (2) any declaration of bankruptcy made against him and any arrangement made by him with creditors (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY**);

2192 (3) any county court judgments against him;

2193 (4) any proceedings taken against him under s 43 of the Solicitors Act 1974 (see PARA 926 et seq);

2194 (5) any decision (whether under appeal or not) excluding or expelling him from any other professional body;

and every applicant for registration with ILEX and every member must by notice to ILEX declare them: Investigation, Disciplinary and Appeals Rules 2008 r 16. Further provision is made with regard to prior conduct: see rr 17-25.

5 Investigation, Disciplinary and Appeals Rules 2008 r 10(b).

6 This includes the code of conduct, and guides to good practice (see PARA 1471): Investigation, Disciplinary and Appeals Rules 2008 r 10(c). As to the Articles of Association see PARA 1464 note 1.

7 Investigation, Disciplinary and Appeals Rules 2008 r 10(c).

8 Investigation, Disciplinary and Appeals Rules 2008 r 10(d).

9 As to ILEX see PARA 1464.

10 See the Investigation, Disciplinary and Appeals rules 2008 rr 8, 26, Appendix 2, Form C1.

11 'Investigating practitioner' means an authorised practitioner appointed by ILEX to investigate a complaint against a member: Investigation, Disciplinary and Appeals Rules 2008 r 9.

12 'Officer' means ILEX's officer serving the Investigating Committee: Investigation, Disciplinary and Appeals Rules 2008 r 9. The officer may, where he feels that the potential seriousness or complexity of the case merits it, refer a case to an investigating practitioner: see rr 27(d), 28(1)(b).

13 See the Investigation, Disciplinary and Appeals Rules 2008 rr 27, 28(1). Provision is also made with regard to timescales (see r 29; and Appendix 1) and notification (see r 30). As to the further powers of the committee see r 35.

14 See the Investigation, Disciplinary and Appeals Rules 2008 rr 27(f), 28(2). Provision is also made for the service of documents: see r 7.

15 See the Investigation, Disciplinary and Appeals Rules 2008 rr 27(m), 28(3). The committee must not investigate old complaints (ie where the matter to which the complaint relates occurred more than 12 months before the complaint was raised) unless the complainant can show good reason why he could not bring the matter to the attention of the ILEX earlier, or the committee decides that the complaint should nevertheless be investigated: see r 33. The committee may request a member to appear before it: see r 35.

16 Investigation, Disciplinary and Appeals Rules 2008 r 31(a).

17 Investigation, Disciplinary and Appeals Rules 2008 r 31(b).

18 Investigation, Disciplinary and Appeals Rules 2008 r 31(c).

- 19 Investigation, Disciplinary and Appeals Rules 2008 r 31(d).
- 20 Investigation, Disciplinary and Appeals Rules 2008 r 31(e).
- 21 Investigation, Disciplinary and Appeals Rules 2008 r 31(f).
- 22 Investigation, Disciplinary and Appeals Rules 2008 r 31(g).
- 23 Investigation, Disciplinary and Appeals Rules 2008 r 31(h).
- 24 Investigation, Disciplinary and Appeals Rules 2008 r 31(i). The committee may decide to admonish, reprimand or warn a member as to his future conduct only if it finds that the conduct complained of has been proved on the balance of probabilities, on the basis of the evidence and information before it: r 32(2).
- 25 Investigation, Disciplinary and Appeals Rules 2008 r 31(j). Where the committee decides a prima facie case has been made out that a member has been guilty of professional misconduct, a breach of the institute's Articles of Association, bye-laws or regulations, or conduct unbecoming to ILEX or likely to bring it or its members into disrepute it must refer the matter to the Disciplinary Tribunal unless it finds that the conduct is not serious enough to justify such a referral being made: r 32(1). As to the Disciplinary Tribunal see PARA 1474.
- 26 See the Investigation, Disciplinary and Appeals Rules 2008 rr 41, 43(1). As to the grounds for appeal see r 47.
- 27 As to the establishment and authority of the Appeals Committee see the Investigation, Disciplinary and Appeals Rules 2008 r 1(3), (4). An Appeals Committee must consist of three members eligible to serve, of whom two are lay members and one is a member of the council: r 45(1). Further provision is made with regard to the purpose and composition of the Appeals Committee in rr 44, 45(2)-(6), 46.
- 28 Investigation, Disciplinary and Appeals Rules 2008 r 43(2). Provision is made as to procedure in rr 48-54.

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1474. The Disciplinary and Appeals Tribunals.

If a complaint¹ is referred to the Disciplinary Tribunal² the complainant³ and the respondent⁴ must be notified as soon as is reasonably practical⁵, and a date, time and venue must be set for the hearing within three months of the referral⁶. A panel must also be selected from the tribunal to hear the case⁷. Additional charges may be brought where the panel is satisfied that this would not occasion unfairness to the respondent⁸.

The panel must decide whether each allegation made against the respondent has been proven beyond reasonable doubt⁹. If it finds that one or more of the allegations has been proven, it has the power to: (a) exclude a person from membership¹⁰; (b) admonish or reprimand the member¹¹; and (c) order the member to pay a fine, costs to ILEX, compensation to the complainant, or all three¹². If the panel judges that one or more allegations have not been proven, it may order that ILEX pay compensation to the respondent or cover his costs¹³. Documents and exhibits used or produced at a hearing must be maintained for at least a year¹⁴, and any findings or orders reported to the council¹⁵. The tribunal may also decide that its decision should be published¹⁶.

The member may appeal against a decision of the Disciplinary Tribunal to the Appeals Tribunal¹⁷ who may affirm or vary the findings¹⁸.

1 As to the meaning of 'complaint' see PARA 1473 note 2.

2 The Disciplinary Tribunal is established under the Investigation, Disciplinary and Appeals Rules 2008 r 1(5), (6). It is made up of 11 members of whom four are appointed by the council and seven are lay members: r 56(1). It has jurisdiction to hear matters referred to it by the Investigating or Appeals Committees (see PARA 1473) and may regulate its own procedure: see r 56(2), (3). As to the appointment of tribunal members see rr 2, 57. As to the meaning of 'lay member' see PARA 1473 note 1. As to the council see PARA 1465.

3 'Complainant' means a person who made a complaint to the Institute for Legal Executive ('ILEX') against a member: Investigation, Disciplinary and Appeals Rules 2008 r 55(1). As to ILEX see PARA 1464.

4 'Respondent' means the member against whom a complaint is made: Investigation, Disciplinary and Appeals Rules 2008 r 55(1).

5 See the Investigation, Disciplinary and Appeals Rules 2008 r 58(1). Provision is also made for the service of documents: see r 7.

6 See the Investigation, Disciplinary and Appeals Rules 2008 r 58(2). The applicant (ie the person having carriage of a matter referred to the tribunal, normally ILEX) must lodge a notice of application with the tribunal: see rr 55(1), 58(3).

7 See the Investigation, Disciplinary and Appeals Rules 2008 r 59. The panel consists of three members of the tribunal, two lay and one member of the council: r 59(1). Provision is made for preliminary meetings of the panel: see r 60. As to the documents on which the parties intend to rely, evidence, and procedure at the hearing see rr 62-66.

8 See the Investigation, Disciplinary and Appeals Rules 2008 r 61.

9 See the Investigation, Disciplinary and Appeals Rules 2008 r 67(1). A decision may be by majority of the panel: r 67(2). As to procedure with regard to the announcement of a decision see r 67(3), (4), (7)-(9). Provision is also made for a re-hearing where a respondent has neither attended the hearing in person nor been represented: see r 68.

10 See the Investigation, Disciplinary and Appeals Rules 2008 r 67(5)(a)(i).

- 11 See the Investigation, Disciplinary and Appeals Rules 2008 r 67(5)(a)(ii).
- 12 See the Investigation, Disciplinary and Appeals Rules 2008 r 67(5)(b).
- 13 See the Investigation, Disciplinary and Appeals Rules 2008 r 67(6).
- 14 See the Investigation, Disciplinary and Appeals Rules 2008 r 69(1).
- 15 See the Investigation, Disciplinary and Appeals Rules 2008 r 69(2). The council must cause any such finding or order to be recorded: r 69(2). The Law Society must be given notice of all findings and orders: see r 69(3).
- 16 See the Investigation, Disciplinary and Appeals Rules 2008 r 69(4)-(7).
- 17 See the Investigation, Disciplinary and Appeals Rules 2008 r 70. As to the grounds for appeal see r 72. As to the establishment and authority of the Appeals Tribunal see the Investigation, Disciplinary and Appeals Rules 2008 r 1(7), (8). An Appeals Tribunal comprises the president and or vice-president of ILEX, and two lay members who did not sit on the panel: r 73(1).
- 18 See the Investigation, Disciplinary and Appeals Rules 2008 r 73(5). Further provision is made with regard to the procedure in rr 73(2)-(4), (6), (7), 74, 75.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/7. LEGAL EXECUTIVES/(3) PROFESSIONAL CONDUCT/1475. The Legal Services Ombudsman and the Office for Legal Complaints.

1475. The Legal Services Ombudsman and the Office for Legal Complaints.

Until a day to be appointed the Legal Services Ombudsman has jurisdiction to investigate allegations concerning the handling of complaints by the Institute of Legal Executives ('ILEX')¹, but has no jurisdiction to conduct such an investigation where a complaint is handled by the ILEX Disciplinary Tribunal².

As from a day to be appointed, ILEX will, as an approved regulator for the purposes of the Legal Services Act 2007, fall within the jurisdiction of the Office for Legal Complaints³.

1 See the Legal Services Ombudsman (Jurisdiction) 1990, SI 1990/2485, Schedule Pt 1; and PARA 425. As to the Legal Services Ombudsman see PARA 424 et seq. As from a day to be appointed the office of Legal Services Ombudsman is dissolved. At the date at which this volume states the law no such day had been appointed.

2 Legal Services Ombudsman (Jurisdiction) 1990, SI 1990/2485, Schedule Pt 2; and PARA 426.

3 As to the Office for Legal Complaints see PARA 442 et seq. As to the meaning of 'approved regulator' see PARA 358.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(1) INTRODUCTION/1476. Introduction.

8. ALTERNATIVE BUSINESS STRUCTURES

(1) INTRODUCTION

1476. Introduction.

As from a day to be appointed the following provisions have effect¹. A licensable body² which, by virtue of a licence under the Legal Services Act 2007 Part 5³, is authorised to carry on a reserved legal activity⁴ by a licensing authority⁵ is an authorised person in respect of that activity⁶ and consequently entitled to carry on that activity⁷.

The Legal Services Act 2007 Part 5 has effect for the purpose of regulating the carrying on of reserved legal activities and other activities by a body which holds a licence in force under Part 5 (a 'licensed body')⁸.

1 The Legal Services Act 2007 ss 13, 18, 71, 109 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensable bodies' see PARA 1477.

3 Ie the Legal Services Act 2007 ss 71-111.

4 As to the meaning of 'reserved legal activity' see PARA 512.

5 As to the meaning of 'licensing authority' see PARA 1478. As to applications for a licence see PARA 1515 et seq. For the purposes of the Legal Services Act 2007 a 'licensed body' means a body which holds a licence in force under Pt 5: s 71(2).

6 As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515.

7 See the Legal Services Act 2007 ss 13(2)(a), 18(1)(b); and PARAS 509, 515.

8 See the Legal Services Act 2007 s 71. The Lord Chancellor may by order make provision for the modification of any provision of Pt 5 (ss 71-111) in its application to a body of persons formed under, or in so far as the body is recognised by, law having effect outside England and Wales: s 109.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(1) INTRODUCTION/1477. Licensable bodies.

1477. Licensable bodies.

As from a day to be appointed the following provisions have effect¹. A body ('B') is a licensable body if a non-authorised person² is a manager of B or has an interest in B³. B is also a licensable body if another body ('A') is a manager of B, or has an interest in B and non-authorised persons are entitled to exercise, or control the exercise of, at least 10 percent of the voting rights in A⁴. A body may be licensable by virtue of both the above situations⁵.

1 The Legal Services Act 2007 ss 72, 111 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 'Non-authorised person' means a person who is not one of the following:

2195 (1) an authorised person in relation to an activity which constitutes a reserved legal activity (Legal Services Act 2007 s 111(1), (2)(a));

2196 (2) a registered foreign lawyer (s 111(1), (2)(b));

2197 (3) a person entitled to pursue professional activities under a professional title to which the EC Council Directive 98/5 (OJ L077, 14.3.98, p 36) to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained (see PARA 534), applies in a state to which the Directive applies (other than the title of barrister or solicitor in England and Wales) (Legal Services Act 2007 s 111(1), (2)(c), (3));

2198 (4) a body which provides professional services such as are provided by persons within head (1) above or lawyers of other jurisdictions, and all the managers of which and all the persons with an interest in which are within heads (1)-(3) above or are bodies in which persons within heads (1)-(3) above are entitled to exercise, or control the exercise of, more than 90% of the voting rights (s 111(1), (2)(d)).

As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'barrister' see PARA 1033 and as to barristers generally see PARA 1033 et seq. As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'registered foreign lawyer' see the Courts and Legal Services Act 1990 s 89; and PARA 628 note 2.

3 Legal Services Act 2007 s 72(1). A person has an interest in a body if the person holds shares in the body or the person is entitled to exercise, or control the exercise of, voting rights in the body: s 72(3). 'Shares' means:

2199 (1) in relation to a body with a share capital, allotted shares (s 72(6)(a));

2200 (2) in relation to a body with capital but no share capital, rights to share in the capital of the body (s 72(6)(b));

2201 (3) in relation to a body without capital, interests:

26. (a) conferring any right to share in the profits, or liability to contribute to the losses, of the body (s 72(6)(c)(i)); or
26

27. (b) giving rise to an obligation to contribute to the debts or expenses of the body in the event of a winding up (s 72(6)(c)(ii));
27

and references to the holding of shares, or to a shareholding, are to be construed accordingly (s 76(6)).

As to the meanings of 'share capital' and 'allotted shares' see the Companies Act 2006 ss 545, 546; and **COMPANIES** vol 15 (2009) PARAS 1042, 1091. As to the meaning of 'manager' see PARA 369 note 17.

4 Legal Services Act 2007 s 72(2). A non-authorised person has an indirect interest in a licensable body if the body is licensable by virtue of s 72(2) and the non-authorised person is entitled to exercise, or control the exercise of, voting rights in A: s 72(5).

5 Legal Services Act 2007 s 72(4).

UPDATE

1477 Licensable bodies

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(i) Generally/1478. Licensing authorities.

(2) LICENSING AUTHORITIES

(i) Generally

1478. Licensing authorities.

As from a day to be appointed the following provisions have effect¹. 'Licensing authority' means the Legal Services Board or an approved regulator which is designated as a licensing authority² and whose licensing rules³ are approved for the purposes of the Legal Services Act 2007⁴.

The Board is a licensing authority in relation to all reserved legal activities⁵ and may delegate any of its functions as a licensing authority to such persons as it considers appropriate⁶. The Board must take such steps as are necessary to ensure an appropriate financial and organisational separation between the activities of the Board that relate to the carrying out of its functions as a licensing authority and the other activities of the Board⁷.

An approved regulator which is designated as a licensing authority and whose licensing rules are approved for the purposes of the Legal Services Act 2007⁸ is a licensing authority in relation to any reserved legal activity in relation to which the designation is made⁹.

1 The Legal Services Act 2007 ss 73, 74, 103 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Legal Services Act 2007 s 73(1)(a). As to the Legal Services Board see s 2; and PARAS 303-326. As to the meaning of 'approved regulator' see PARA 358. As to licensing rules see PARA 1498 et seq.

3 Is designated under the Legal Services Act 2007 Sch 10 Pt 1 (see PARA 1479 et seq).

4 Legal Services Act 2007 s 73(1)(b).

5 Legal Services Act 2007 s 73(2)(a). When exercising its functions in its capacity as a licensing authority under Pt 5 (ss 71-111) the Board must have regard to any guidance it has issued under s 162: see s 162(6)(b); and PARA 314. As to the meaning of 'reserved legal activities' see PARA 512.

6 Legal Services Act 2007 s 73(3)(a).

7 Legal Services Act 2007 s 73(3)(b). Sections 52 and 54 (regulatory conflict between approved regulators and between approved regulators and other regulators) apply in relation to the Board in its capacity as a licensing authority and its licensing rules as they apply in relation to an approved regulator (including the Board in its capacity as approved regulator) and its regulatory arrangements: s 103(1). Section 68 (regulatory conflict and the Board as approved regulator) applies in relation to the Board in its capacity as a licensing authority and its licensing rules as it applies in relation to the Board in its capacity as an approved regulator and its regulatory arrangements: s 103(2).

8 Is an approved regulator within the Legal Services Act 2007 s 73(1)(b).

9 Legal Services Act 2007 s 73(2)(b). Schedule 10 makes provision for approved regulators to be designated by order as licensing authorities in relation to one or more reserved legal activities (see PARA 1479 et seq): s 74.

UPDATE

1478 Licensing authorities

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 74 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(ii) Designation of Approved Regulator as Licensing Authority/1479. Application.

(ii) Designation of Approved Regulator as Licensing Authority

1479. Application.

As from a day to be appointed the following provisions have effect¹. Where a body wishes to become a licensing authority² in relation to one or more activities which constitute one or more reserved legal activities³ the following provisions apply⁴. The body may apply to the Legal Services Board⁵ for the Board to recommend that an order be made by the Lord Chancellor designating the applicant as a licensing authority in relation to the reserved legal activity or activities in question and to approve what the applicant proposes as its licensing rules⁶ if such an order is made (the 'proposed licensing rules')⁷.

However a body may only make an application in relation to a reserved legal activity if it is a relevant approved regulator in relation to the activity⁸ or it has made an application⁹ for the Board to recommend that an order be made by the Lord Chancellor designating the body as an approved regulator in relation to the activity¹⁰.

An applicant may, at any time, withdraw the application by giving notice to that effect to the Board¹¹.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478.

3 As to the meaning of 'reserved legal activities' see PARA 512. As to the provisional designation of an activity as a reserved legal activity for the purposes of the Legal Services Act 2007 Sch 10 Pt 1 see s 25; and PARA 360.

4 Legal Services Act 2007 Sch 10 para 1(1).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

6 As to licensing rules see PARA 1498 et seq.

7 Legal Services Act 2007 Sch 10 para 1(2). At the date at which this volume states the law no such day had been appointed. An application under Sch 10 para 1 must be made in such form and manner as the Board may specify in rules and must be accompanied by a statement of the reserved legal activity or activities to which it relates, details of the applicant's proposed licensing rules, such explanatory material as the applicant considers is likely to be needed for the purposes of Sch 10 Pt 1 and the prescribed fee: Sch 10 para 1(4). The prescribed fee is the fee specified in, or determined in accordance with, rules made by the Board with the consent of the Lord Chancellor: Sch 10 para 1(5). As to the making of rules governing the decision of the Board see Sch 10 para 11; and PARA 1482. As to the determination of the application see Sch 10 para 12; and PARA 1483. Such rules are non-statutory in nature and not determined in this work. Any prescribed fee so received is payable into the Consolidated Fund: see s 175(1)(a), (2)(c). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

8 Legal Services Act 2007 Sch 10 para 1(3)(a). As to the meaning of 'approved regulator' see PARA 358.

9 Is an application under the Legal Services Act 2007 Sch 4 paras 3-18 (see PARAS 360-366).

10 Legal Services Act 2007 Sch 10 para 1(3)(b).

11 Legal Services Act 2007 Sch 10 para 1(6). As to notices generally see PARA 303 note 11.

UPDATE

1479 Application

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 10 para 1(1), (4), (5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(ii) Designation of Approved Regulator as Licensing Authority/1480. Dismissal of application.

1480. Dismissal of application.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may refuse to consider or to continue its consideration of an application to become a licensing authority³. The Board must make rules about the procedures and criteria that it will apply when determining whether to refuse to consider or to continue its consideration of such an application⁴.

Where the Board decides to refuse to consider or to continue its consideration of an application it must give the applicant notice of that decision and of its reasons for it⁵.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 10 para 2(1). As to the meaning of 'licensing authority' see PARA 1478.

4 Legal Services Act 2007 Sch 10 para 2(2). Such rules are non-statutory and are not set out in this work.

5 Legal Services Act 2007 Sch 10 para 2(3). The Board must publish a notice given under Sch 10 para 2(3): Sch 10 para 2(4). As to notices generally see PARA 303 note 11.

UPDATE

1480 Dismissal of application

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 10 para 2(2) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(ii) Designation of Approved Regulator as Licensing Authority/1481. Advice.

1481. Advice.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must give each of the persons listed below a copy of the application and accompanying material and a notice specifying a period within which any advice³ must be given⁴. Those persons are:

- 714 (1) the Office of Fair Trading⁵;
- 715 (2) the Consumer Panel⁶;
- 716 (3) the Lord Chief Justice⁷;
- 717 (4) such other persons as the Board considers it reasonable to consult regarding the application⁸.

The Board must give the applicant a copy of any advice duly given by the persons in heads (1) to (4) above⁹ and the applicant may make to the Board written representations and, if the Board authorises it to do so, oral representations, about the advice¹⁰. The Board must, as soon as practicable after the period within which representations¹¹ may be made, publish any advice duly given¹² and any written representations duly made¹³ and the report if any¹⁴.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 ie any advice under the Legal Services Act 2007 Sch 10 paras 4-6 (see notes 5-8). As to notices generally see PARA 303 note 11.

4 Legal Services Act 2007 Sch 10 para 3(1). A person (the 'consultee') to whom a copy of the application is given under Sch 10 para 3(1) may, for the purposes of giving advice under Sch 10 paras 4-7, request the applicant or any other person to provide the consultee with such additional information as may be specified by the consultee: Sch 10 para 8.

5 Legal Services Act 2007 Sch 10 para 3(2)(a). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. The Office of Fair Trading must give the Board such advice as the Office thinks fit regarding whether the application should be granted, and in deciding what advice to give the Office must in particular have regard to whether making an order under Sch 10 para 15 (see PARA 1484) in accordance with the recommendation applied for would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 10 para 4. As to the meaning of 'reserved legal services' see PARA 512 note 2.

6 Legal Services Act 2007 Sch 10 para 3(2)(b). As to the Consumer Panel see PARA 323. The Consumer Panel must give the Board such advice as the Consumer Panel thinks fit regarding whether the application should be granted and, in deciding what advice to give, the Consumer Panel must, in particular, have regard to the likely impact on consumers of the making of an order under Sch 10 para 15 (see PARA 1484) in accordance with the recommendation applied for: Sch 10 para 5. As to the meaning of 'consumers' see PARA 302 note 8.

7 Legal Services Act 2007 Sch 10 para 3(2)(c). The Board must give the Lord Chief Justice a copy of any advice duly given under Sch 10 paras 4-6 and a notice specifying a period within which any advice under Sch 10 para 7 must be given: Sch 10 para 7(1). The Lord Chief Justice must then give such advice to the Board as the Lord Chief Justice thinks fit regarding whether the application should be granted: Sch 10 para 7(2). In deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact on the courts in

England and Wales of the making of an order under Sch 10 para 15 (PARA 1484) in accordance with the recommendation applied for: Sch 10 para 7(3).

8 Legal Services Act 2007 Sch 10 para 3(2)(d). In Sch 10 Pt 1, in relation to an application 'selected consultee' means a person within Sch 10 para 3(2)(d): Sch 10 para 3(3). A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the application: Sch 10 para 6.

9 Ie advice duly given under the Legal Services Act 2007 Sch 10 paras 4-7 (see notes 5-8).

10 Legal Services Act 2007 Sch 10 para 9(1), (2). The Board must make rules governing the making of oral and written representations: Sch 10 para 9(3). Representations must be made within the period of 28 days beginning with the day on which the copy of the advice is given to the applicant or such longer period as the Board may specify in a particular case: Sch 10 para 9(4). Where oral representations are made, the Board must prepare a report of those representations: Sch 10 para 9(5). Before preparing that report, the Board must give the applicant a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made: Sch 10 para 9(6).

11 Ie representations under the Legal Services Act 2007 Sch 10 para 9 (see text and note 10).

12 Ie advice duly given under the Legal Services Act 2007 Sch 10 paras 4-7 (see notes 5-8).

13 Ie written representations duly made under the Legal Services Act 2007 Sch 10 para 9.

14 Legal Services Act 2007 Sch 10 para 10(1). Nothing in Sch 10 para 10(1) operates:

2202 (1) to prevent a person who gives advice under Sch 10 paras 4-7 (see notes 5-8) from publishing that advice (Sch 10 para 10(2)(a)); or

2203 (2) to prevent a person who makes representations under Sch 10 para 9 (see text and note 10) from publishing those representations (Sch 10 para 10(2)(b)).

A person (the 'publisher') publishing any such material (whether under Sch 10 para 10(1) or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 10 para 10(3).

UPDATE

1481 Advice

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 10 para 9(3) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(ii) Designation of Approved Regulator as Licensing Authority/1482. Rules governing decisions by the Board.

1482. Rules governing decisions by the Board.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must make rules specifying how it will determine applications³. Such rules must in particular provide that the Board may grant an application in relation to a particular reserved legal activity⁴ only if it is satisfied:

- 718 (1) that the applicant's proposed licensing rules in relation to the activity comply with the necessary requirements⁵;
- 719 (2) that, if an order were to be made⁶ designating the body in relation to the activity, there would be a body with power to hear and determine appeals which, under the Legal Services Act 2007 Part 5⁷ or the applicant's proposed licensing rules, may be made against decisions of the applicant⁸;
- 720 (3) that, if an order were to be made⁹ designating the body in relation to the activity, the applicant would have appropriate internal governance arrangements in place at the time the order takes effect¹⁰;
- 721 (4) that, if an order were made¹¹ designating the body in relation to the activity, the applicant would be competent, and have sufficient resources, to perform the role of licensing authority in relation to the activity at the time the order takes effect¹².

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Legal Services Act 2007 Sch 10 para 11(1). Such rules are non-statutory and outside the scope of this work.

4 As to the meaning of 'reserved legal activity' see PARA 512.

5 Legal Services Act 2007 Sch 10 para 11(2)(a). The necessary requirements mentioned in the text are the requirements under s 83 (see PARAS 1498, 1499). As to licensing rules see PARA 1498 et seq.

6 Ie an order made under the Legal Services Act 2007 Sch 10 para 15 (see PARA 1484).

7 Ie the Legal Services Act 2007 ss 71-111.

8 Legal Services Act 2007 Sch 10 para 11(2)(b).

9 Ie an order made under the Legal Services Act 2007 Sch 10 para 15 (see PARA 1484).

10 Legal Services Act 2007 Sch 10 para 11(2)(c). The rules made for the purposes of Sch 10 para 11(2)(c) must in particular require the Board to be satisfied that the exercise of the applicant's regulatory functions would not be prejudiced by any of its representative functions and that decisions relating to the exercise of its regulatory functions would so far as reasonably practicable be taken independently from decisions relating to the exercise of its representative functions: Sch 10 para 11(3).

11 Ie an order made under the Legal Services Act 2007 Sch 10 para 15 (see PARA 1484).

12 Legal Services Act 2007 Sch 10 para 11(2)(d). As to the meaning of 'licensing authority' see PARA 1478.

UPDATE

1482 Rules governing decisions by the Board

TEXT AND NOTE 1--Day appointed is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(ii) Designation of Approved Regulator as Licensing Authority/1483. Determination of application.

1483. Determination of application.

As from a day to be appointed the following provisions have effect¹. After considering the application and accompanying material, any other information provided by the applicant, any advice duly given², any representations duly made³ and any other information which the Legal Services Board⁴ considers relevant to the application, the Board must decide whether to grant the application⁵.

Where the application relates to more than one reserved legal activity⁶, the Board may grant the application in relation to all or any of them⁷.

The Board must give notice of its decision to the applicant (the 'decision notice') and where the Board decides to refuse the application (in whole or in part), the decision notice must specify the reasons for that decision⁸.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 The advice given under the Legal Services Act 2007 Sch 10 paras 4-7 (see PARA 1481).

3 The representations made under the Legal Services Act 2007 Sch 10 para 9 (see PARA 1481).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 10 para 12(1).

6 As to the meaning of 'reserved legal activity' see PARA 512.

7 Legal Services Act 2007 Sch 10 para 12(2).

8 Legal Services Act 2007 Sch 10 para 12(3), (4). The Board must publish the decision notice: Sch 10 para 12(5). Where an application is made under the Legal Services Act 2007 Sch 10 paras 1-16 (see PARAS 1479-1484), the Board must give the decision notice under Sch 10 para 12 within 12 months beginning with the day on which the application is made to the Board (the 'decision period'): Sch 10 para 13(1), (2). The Board may, before the end of the decision period, issue a notice extending that period by a period specified in the notice and stating the reasons for extending the decision period: Sch 10 para 13(3), (6). Although more than one such notice may be issued, the decision period must not exceed 16 months: Sch 10 para 13(4). The Board may issue a notice under Sch 10 para 13(3) only after it has consulted the Office of Fair Trading, the Consumer Panel and the Lord Chief Justice, and obtained the Lord Chancellor's consent to the extension: Sch 10 para 13(5). The Board must publish any notice issued under Sch 10 para 11(3): Sch 10 para 13(7). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. As to notices generally see PARA 303 note 11.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(ii) Designation of Approved Regulator as Licensing Authority/1484. Effect of grant of application.

1484. Effect of grant of application.

As from a day to be appointed the following provisions have effect¹. Where an application is granted in relation to a reserved legal activity² or activities the Legal Services Board must recommend³ to the Lord Chancellor that an order be made designating the applicant as a licensing authority in relation to the reserved legal activity or activities in question⁴. Where such a recommendation is made the Lord Chancellor may:

- 722 (1) make an order in accordance with the recommendation⁵; or
- 723 (2) refuse to make such an order⁶.

Where such an order is made⁷, the applicant's proposed licensing rules are at the same time treated as having been approved by the Board⁸.

Where the recommendation relates to more than one reserved legal activity, the Lord Chancellor may make an order under head (1) above in relation to all or any of them⁹.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'reserved legal activity' see PARA 512.

3 The Legal Services Board must publish any recommendation made under the Legal Services Act 2007 Sch 10 para 14(2): Sch 10 para 14(3). As to the Legal Services Board see s 2; and PARAS 303-326.

4 Legal Services Act 2007 Sch 10 para 14(1), (2). At the date at which this volume states the law no such orders had been made. The Board must make available to the Lord Chancellor any advice duly given under Sch 10 paras 4-7 (see PARA 1481), any written representations duly made under Sch 10 para 9 (see PARA 1481) and the report (if any) prepared under Sch 10 para 9 and any other material considered by the Board for the purpose of determining the application: Sch 10 para 14(4). As to the meaning of 'licensing authority' see PARA 1478.

5 Legal Services Act 2007 Sch 10 para 15(1)(a).

6 Legal Services Act 2007 Sch 10 para 15(1)(b). The Lord Chancellor must decide whether to make an order under Sch 10 para 15 and give notice of that decision (the 'decision notice') to the applicant, within the period of 90 days beginning with the day on which the recommendation was made: Sch 10 para 15(4). If the Lord Chancellor decides not to make an order in accordance with the whole or part of the recommendation, the decision notice must state the reasons for the decision: Sch 10 para 15(5). The Lord Chancellor must publish the decision notice: Sch 10 para 15(5). As to notices generally see PARA 303 note 11.

7 Where an order is made by the Lord Chancellor under the Legal Services Act 2007 Sch 10 para 15.

8 Legal Services Act 2007 Sch 10 para 16(1). But where the order relates to one or more (but not all) of the reserved legal activities to which the application related, Sch 10 para 16(1) has effect as if the reference to the applicant's proposed licensing rules were a reference to those rules excluding any provision made in respect of any activities excluded from the order: Sch 10 para 16(2). Schedule 10 para 16(1) is without prejudice to the Board's power to give directions under s 32 (powers to direct an approved regulator to take steps in certain circumstances, including steps to amend its regulatory arrangements) (see PARA 388): Sch 10 para 16(3). As to licensing rules see PARA 1498 et seq. As to the meaning of 'approved regulator' see PARA 358.

9 Legal Services Act 2007 Sch 10 para 15(2). But if the application, in relation to a particular reserved legal activity, was made in reliance on Sch 10 para 1(3)(b) (see PARA 1479), the Lord Chancellor must not make an

order in relation to that activity unless the Lord Chancellor has made an order under Sch 4 paras 3-18 (see PARAS 360-366) designating the body as an approved regulator in relation to that activity: Sch 10 para 15(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/A. AUTOMATIC CANCELLATION/1485. Automatic cancellation.

(iii) Cancellation of Designation

A. AUTOMATIC CANCELLATION

1485. Automatic cancellation.

As from a day to be appointed the following provisions have effect¹. Where a body is designated as an approved regulator in relation to a reserved legal activity (the 'activity') and as a licensing authority² in relation to the activity, if the Lord Chancellor makes an order³ cancelling the body's designation as an approved regulator in relation to the activity, the body's designation as a licensing authority in relation to the activity is also cancelled⁴. The cancellation takes effect at the same time as cancellation of the body's designation as an approved regulator⁵.

1 The Legal Services Act 2007 ss 75, 77 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'licensing authority' see PARA 1478.

3 ie an order under the Legal Services Act 2007 s 45 (see PARA 405).

4 Legal Services Act 2007 s 75(1). Where an approved regulator has its designation as a licensing authority in relation to one or more reserved legal activities cancelled by virtue of s 75 the Lord Chancellor may by order make such modifications of provisions made by or under any enactment (including the Legal Services Act 2007 or any enactment passed after it), prerogative instrument or other instrument or document and such transitional or consequential provision, as the Lord Chancellor considers necessary or expedient in consequence of the cancellation: s 77(1)(a), (2). The Lord Chancellor may make an order under s 77 only if the Board has made a recommendation in accordance with s 78 (see PARA 1494) and the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation: s 77(8). At the date at which this volume states the law no such day had been appointed.

5 Legal Services Act 2007 s 75(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/B. CANCELLATION BY ORDER/1486. Cancellation by the Lord Chancellor.

B. CANCELLATION BY ORDER

1486. Cancellation by the Lord Chancellor.

As from a day to be appointed the following provisions have effect¹. The Lord Chancellor may by order cancel an approved regulator's designation as a licensing authority in relation to all the reserved legal activities² in relation to which it is designated or in relation to one or more, but not all, of those reserved legal activities, with effect from a date specified in the order³. However the Lord Chancellor may only make an order in accordance with a recommendation⁴ by the Legal Services Board⁵.

1 The Legal Services Act 2007 ss 76, 77 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478. As to the meaning of 'reserved legal activities' see PARA 512.

3 Legal Services Act 2007 s 76(1). At the date at which this volume states the law no such orders had been made. Where an approved regulator has its designation as a licensing authority in relation to one or more reserved legal activities cancelled by an order under s 76 the Lord Chancellor may by order make such modifications of provisions made by or under any enactment (including the Legal Services Act 2007 or any enactment passed after it), prerogative instrument or other instrument or document and such transitional or consequential provision, as the Lord Chancellor considers necessary or expedient in consequence of the cancellation: s 77(1)(b), (2). The Lord Chancellor may make an order under s 77 only if the Board has made a recommendation in accordance with s 78 (see PARA 1494) and the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation: s 77(8). At the date at which this volume states the law no such day had been appointed.

4 I.e a recommendation under the Legal Services Act 2007 s 76(3) or 76(5) (see PARAS 1487-1488): s 76(2).

5 Legal Services Act 2007 s 76(8). If the Lord Chancellor decides not to make an order in response to a recommendation made under s 76(3) or 76(5) (see PARAS 1487-1488), the Lord Chancellor must give the Board notice of the decision and the reasons for it: s 76(8). The Lord Chancellor must publish a notice given under s 76(8): s 76(9). As to the Legal Services Board see s 2; and PARAS 303-326. As to the recommendation by the Board see PARAS 1487-1488. As to notices generally see PARA 303 note 11.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/B. CANCELLATION BY ORDER/1487. Recommendation on application by the approved regulator.

1487. Recommendation on application by the approved regulator.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must recommend that an order is made cancelling an approved regulator's designation as a licensing authority³ in relation to one or more reserved legal activities if⁴:

- 724 (1) the approved regulator applies to the Board for such a recommendation to be made⁵;
- 725 (2) the application is made in such form and manner as may be prescribed by rules made by the Board, and is accompanied by the prescribed fee⁶; and
- 726 (3) the approved regulator publishes a notice giving details of the application in accordance with such requirements as may be specified in rules made by the Board⁷.

The Board may not determine that it is appropriate to cancel an approved regulator's designation as a licensing authority in relation to an activity or activities unless it is satisfied that the matter cannot be adequately addressed by the Board's other powers⁸.

1 The Legal Services Act 2007 s 76 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478. Where the Board proposes to make such a recommendation it must notify the licensing authority see Sch 10 para 18; and PARA 1489.

4 Legal Services Act 2007 s 76(3). As to the meaning of 'reserved legal activities' see PARA 512.

5 Legal Services Act 2007 s 76(3)(a).

6 Legal Services Act 2007 s 76(3)(b). For this purpose 'prescribed fee' in relation to an application means the fee specified in or determined in accordance with rules made by the Board with the consent of the Lord Chancellor: s 76(4). Such rules are non-statutory in nature and not recorded in this work. Any prescribed fee so received is payable into the Consolidated Fund: see s 175(1)(a), (2)(d). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

7 Legal Services Act 2007 s 76(3)(c). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 s 76(6). The other powers mentioned in the text refers to the powers available to the Board under ss 31-43 (see PARAS 387-401).

UPDATE

1487 Recommendation on application by the approved regulator

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 76(3)(b), (c), (4), (7) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/B. CANCELLATION BY ORDER/1488. Recommendation due to act or omission requiring cancellation.

1488. Recommendation due to act or omission requiring cancellation.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board may recommend that an order is made² cancelling an approved regulator's designation as a licensing authority in relation to one or more reserved legal activities³ if it is satisfied:

- 727 (1) that an act or omission of the licensing authority (or a series of such acts or omissions) has had, or is likely to have, an adverse impact on one or more of the regulatory objectives⁴; and
- 728 (2) that it is appropriate to cancel the approved regulator's designation in relation to the activity or activities in question in all the circumstances of the case (including in particular the impact of cancelling the designation on the other regulatory objectives)⁵.

1 The Legal Services Act 2007 s 76 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to the making of such an order see PARA 1486.

3 As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478. As to the meaning of 'reserved legal activities' see PARA 512. Where the Board proposes to make such a recommendation it must notify the licensing authority: see the Legal Services Act Sch 10 para 28; and PARA 1489.

4 Legal Services Act 2007 s 76(5)(a). For the regulatory objectives see PARA 302.

5 Legal Services Act 2007 s 76(5)(b).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/B. CANCELLATION BY ORDER/1489. Notification of licensing authority.

1489. Notification of licensing authority.

As from a day to be appointed the following provisions have effect¹. Where the Legal Services Board² considers that it may be appropriate to make a recommendation that an order is made³ cancelling an approved regulator's designation as a licensing authority in relation to one or more reserved legal activities⁴ the Board must give the licensing authority a notice (a 'warning notice') accompanied by a draft of the proposed recommendation⁵.

The licensing authority may make to the Board written representations and, if the Board authorises it to do so, oral representations⁶, about the proposed recommendation⁷. The Board must consider any representations duly made by the licensing authority⁸.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Ie an order under the Legal Services Act 2007 s 76(5) (see PARA 1488).

4 See the Legal Services Act 2007 Sch 10 para 17. As to the meaning of 'approved regulator' see PARA 358. As to the meaning of 'licensing authority' see PARA 1478. As to the meaning of 'reserved legal activities' see PARA 512.

5 Legal Services Act 2007 Sch 10 para 18(1). The Board must publish the warning notice: Sch 10 para 18(3). The warning notice must state that the Board proposes to make a recommendation under s 76(5) (see PARA 1488) in the form of the accompanying draft, and state the reasons why the Board is satisfied of the matters mentioned in s 76(5)(a), (b): Sch 10 para 18(2). As to notices generally see PARA 303 note 11. The Board must give certain persons copies of the warning notice and any written representations see Sch 10 para 19; and PARA 1490.

6 The Board must make rules governing the making of oral and written representations: Legal Services Act 2007 Sch 10 para 18(5). Such rules are non-statutory and are not set out in this work. Representations under Sch 10 para 18 must be made within the period of 28 days beginning with the day on which the warning notice is given to the licensing authority or such longer period as the Board may specify in a particular case: Sch 10 para 18(6). Where oral representations are duly made, the Board must prepare a report of those representations: Sch 10 para 18(8). However before preparing that report, the Board must give the licensing authority a reasonable opportunity to comment on a draft of the report and have regard to any comments duly made: Sch 10 para 18(9).

7 Legal Services Act 2007 Sch 10 para 18(4).

8 Legal Services Act 2007 Sch 10 para 18(7).

UPDATE

1489 Notification of licensing authority

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 10 paras 17, 18(5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/B. CANCELLATION BY ORDER/1490. Board's duty to seek advice.

1490. Board's duty to seek advice.

As from a day to be appointed the following provisions have effect¹. After complying with the requirements to notify the licensing authority² the Legal Services Board³ must give each of the persons listed below:

- 729 (1) a copy of the warning notice and the accompanying draft⁴;
- 730 (2) a copy of any written representations duly made⁵ by the licensing authority⁶; and
- 731 (3) a notice specifying a period within which any advice⁷ must be given⁸.

Those persons are:

- 732 (a) the Office of Fair Trading⁹;
- 733 (b) the Consumer Panel¹⁰;
- 734 (c) the Lord Chief Justice¹¹; and
- 735 (d) such other persons as the Board considers it reasonable to consult in respect of the proposed recommendation¹².

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie the requirements under the Legal Services Act 2007 Sch 10 para 18 (see PARA 1489). As to the meaning of 'licensing authority' see PARA 1478.

3 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

4 Legal Services Act 2007 Sch 10 para 19(1)(a). A person (the 'consultee') to whom a copy of the warning notice is given under Sch 10 para 19(1) may, for the purposes of giving advice under Sch 10 paras 20-23 (see notes 9-12), request the licensing authority or any other person to provide the consultee with such additional information as may be specified by the consultee: Sch 10 para 24. As to notices generally see PARA 303 note 11.

5 Ie any written representations duly made under the Legal Services Act 2007 Sch 10 para 18 (see PARA 1489). The Board must also send a copy of any report prepared under Sch 10 para 18.

6 Legal Services Act 2007 Sch 10 para 19(1)(b).

7 Ie any advice under the Legal Services Act 2007 Sch 10 paras 20-22 (see notes 9, 10, 12).

8 Legal Services Act 2007 Sch 10 para 19(1)(c).

9 Legal Services Act 2007 Sch 10 para 19(2)(a). As to the Office of Fair Trading see **COMPETITION** vol 18 (2009) PARA 6 et seq. The Office must give the Board such advice as it thinks fit regarding whether the proposed recommendations should be made: Sch 10 para 20(1). In deciding what advice to give, the Office must, in particular, have regard to whether making an order under s 76 (see PARA 1486) in accordance with the proposed recommendation would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent: Sch 10 para 20. As to the meaning of 'reserved legal services' see PARA 512 note 2. See also note 4.

10 Legal Services Act 2007 Sch 10 para 19(2)(b). As to the Consumer Panel see PARA 323. The Consumer Panel must give the Board such advice as it thinks fit regarding whether the proposed recommendation should be made: Sch 10 para 21(1). In deciding what advice to give, the Consumer Panel must, in particular, have

regard to the likely impact on consumers of making an order under s 76 (see PARA 1486) in accordance with the proposed recommendation: Sch 10 para 21(2). As to the meaning of 'consumers' see PARA 302 note 8. See also note 4.

11 Legal Services Act 2007 Sch 10 para 19(2)(c). The Board must give the Lord Chief Justice a copy of any advice duly given under Sch 10 paras 20-22 (see notes 9, 10, 12) and a notice specifying a period within which advice under Sch 10 para 23 must be given: Sch 10 para 23(1). The Lord Chief Justice must then give such advice as the Lord Chief Justice thinks fit in respect of the proposed recommendation and in deciding what advice to give, the Lord Chief Justice must, in particular, have regard to the likely impact on the courts in England and Wales of making an order under s 76 (see PARA 1486) in accordance with the proposed recommendation: Sch 10 para 23(2), (3). See also note 4.

12 Legal Services Act 2007 Sch 10 para 19(2)(d). For the purposes of Sch 10 Pt 2 'selected consultee' means a person within Sch 10 para 19(2)(d). A selected consultee may give the Board such advice as the selected consultee thinks fit in respect of the proposed recommendation: Sch 10 para 22. See also note 4.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/B. CANCELLATION BY ORDER/1491. Informing the Licensing Authority.

1491. Informing the Licensing Authority.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² must give the licensing authority³ a copy of any advice duly given⁴ and publish that advice together with any written representations duly made⁵ by the licensing authority⁶.

The licensing authority and any body which represents licensed bodies⁷ authorised by the licensing authority to carry on activities which are reserved legal activities⁸ may make to the Board written representations and, if authorised to do so by the Board, oral representations, about the advice⁹. The Board may allow any other person to make written or oral representations about the advice¹⁰.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'licensing authority' see PARA 1478.

4 Ie any advice given under the Legal Services Act 2007 Sch 10 paras 20-23 (see PARA 1490).

5 Ie written representations made under the Legal Services Act 2007 Sch 10 para 18 (see PARA 1489). The Board must also provide a copy of any report prepared under Sch 10 para 18.

6 Legal Services Act 2007 Sch 10 para 25(1). Representations under Sch 10 para 25 must be made within the period of 28 days beginning with the day on which the representations and advice are published or such longer period as the Board may specify in a particular case: Sch 10 para 25(6). Nothing in Sch 10 para 25 operates to prevent a person who gives advice under Sch 10 paras 20-23 (see PARA 1490) from publishing that advice or to prevent a person who makes representations under Sch 10 para 18 (see PARA 1489) or Sch 10 para 25 from publishing those representations: Sch 10 para 26(1). A person (the 'publisher') publishing any such material (whether under Sch 10 para 25 or otherwise) must, so far as practicable, exclude any matter which relates to the private affairs of a particular individual the publication of which, in the opinion of the publisher, would or might seriously and prejudicially affect the interests of that individual: Sch 10 para 26(2).

7 As to the meaning of 'licensed body' see PARA 1476.

8 As to the meaning of 'reserved legal activities' see PARA 512.

9 Legal Services Act 2007 Sch 10 para 25(2), (3). The Board may make rules governing the making to the Board of written or oral representations: Sch 10 para 25(5). Such rules are non-statutory and are not set out in this work. Where oral representations are made, the Board must prepare a report of those representations: Sch 10 para 25(7). However before preparing that report, the Board must give each person who made oral representations a reasonable opportunity to comment on a draft of the report of those representations and have regard to any comments duly made: Sch 10 para 25(8). The Board must, as soon as reasonably practicable after the end of the period within which representations under Sch 10 para 25 may be made, publish any written representations duly made and the report (if any) prepared under Sch 10 para 25(7): Sch 10 para 25(9).

10 Legal Services Act 2007 Sch 10 para 25(4).

UPDATE

1491 Informing the Licensing Authority

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 10 para 25(5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/B. CANCELLATION BY ORDER/1492. Decision by the Board.

1492. Decision by the Board.

As from a day to be appointed the following provisions have effect¹. After considering any advice duly given², any representations duly made³ and any other information which the Legal Services Board⁴ considers relevant, the Board must decide whether to make the proposed recommendation⁵. The Board must give notice of its decision (the 'decision notice') to the licensing authority and to the Lord Chancellor⁶. The Board must publish the decision notice⁷.

1 The Legal Services Act 2007 Sch 10 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 Ie advice given under the Legal Services Act 2007 Sch 10 paras 20-23 (see PARA 1490).

3 Ie any representations made under the Legal Services Act 2007 Sch 10 para 18 (see PARA 1489) or Sch 10 para 25 (see PARA 1491).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 10 para 27(1).

6 Legal Services Act 2007 Sch 10 para 27(2). If the Board decides to make the proposed recommendation, the decision notice must contain the recommendation and state why the Board is satisfied of the matters mentioned in s 76(5)(a), (b) (see PARA 1488): Sch 10 para 27(3). As to the meaning of 'licensing authority' see PARA 1478. As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 Sch 10 para 27(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/C. TRANSFER ARRANGEMENTS ETC/1493. Transfer arrangements.

C. TRANSFER ARRANGEMENTS ETC

1493. Transfer arrangements.

As from a day to be appointed the following provisions have effect¹. Where an approved regulator² (the 'former authority') has its designation as a licensing authority in relation to one or more reserved legal activities cancelled³ the Lord Chancellor may, by order, make transfer arrangements⁴.

The transfer arrangements:

- 736 (1) must make such provision as is necessary to ensure that, where a licensed body⁵ is treated under those arrangements as being authorised to carry on a protected activity by the new authority, that licensed body is subject to the licensing rules of the new authority⁵;
- 737 (2) may make provision requiring amounts held by the former authority which represent amounts paid to it by way of licensing fees⁶ by the consenting licensed bodies (or a part of the amounts so held) to be paid to the new authority and treated as if they were amounts paid by those licensed bodies by way of licensing fees to the new authority⁷.

1 The Legal Services Act 2007 s 77 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358.

3 Is cancelled by virtue of the Legal Services Act 2007 s 75 (see PARA 1485) or by an order under s 76 (see PARA 1486). As to the meaning of 'reserved legal activities' see PARA 512. As to the meaning of 'licensing authority' see PARA 1478.

4 Legal Services Act 2007 s 77(1), (3). At the date at which this volume states the law no such orders had been made. 'Transfer arrangements' are arrangements in accordance with which each consenting licensed body is, from the time the cancellation takes effect, treated as being authorised to carry on each protected activity by virtue of a licence issued under Pt 5 (ss 71-111) by a licensing authority, in relation to the protected activity, which consents to the transfer arrangements: s 77(4). 'Consenting licensed body' means a licensed body authorised by the former authority which consents to the transfer arrangements: s 77(5). For the purposes of s 77 a licensed body is 'authorised by the former authority' if immediately before the time the cancellation takes effect the body is, by virtue of a licence under Pt 5, authorised by the former authority to carry on an activity which is a reserved legal activity to which the cancellation relates and in relation to that body the activity which the body is authorised to carry on is a 'protected activity', and 'new authority' means the licensing authority by which (in accordance with transfer arrangements under s 77(4)) the body is treated as authorised to carry on a protected activity: s 77(9). The Lord Chancellor may make an order under s 77 only if the Board has made a recommendation in accordance with s 78 (see PARA 1494) and the order is in the same form as, or in a form which is not materially different from, the draft order annexed to that recommendation: s 77(8). As to the meaning of 'licensed body' see PARA 1476.

5 Legal Services Act 2007 s 77(6)(a). Section 77(6)(a) is subject to any transitional provision which may be made by the transfer arrangements, including provision modifying the licensing rules of the new authority as they apply to the bodies to whom the transfer arrangements apply: s 77(7). As to licensing rules see PARA 1498 et seq.

6 For the purpose of the Legal Services Act 2007 s 77 'licensing fee', in relation to a licensing authority, means a fee payable by a licensed body under the authority's licensing rules made in accordance with Sch 11 para 21 (see PARA 1512): s 77(10).

7 Legal Services Act 2007 s 77(6)(b).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/C. TRANSFER ARRANGEMENTS ETC/1494. The Board's power to recommend transfer arrangements etc.

1494. The Board's power to recommend transfer arrangements etc.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² may recommend to the Lord Chancellor that the Lord Chancellor make an order for transfer arrangements³ in the form of a draft order prepared by the Board and annexed to the recommendation⁴. Before making such a recommendation the Board must publish a draft of the proposed recommendation and the proposed draft order⁵. The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period⁶. Before making the recommendation, the Board must have regard to any representations duly made⁷.

1 The Legal Services Act 2007 s 78 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 These provisions apply to orders made under the Legal Services Act 2007 s 77 and therefore also apply where the Lord Chancellor makes orders under s 77(2) (see PARAS 1485-1486).

4 Legal Services Act 2007 s 78(1). If the draft order to be annexed to the recommendation differs from the draft previously published in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes: s 78(5).

5 Legal Services Act 2007 s 78(2).

6 Legal Services Act 2007 s 78(3). As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 s 78(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iii) Cancellation of Designation/D. POWERS OF ENTRY/1495. Powers of entry etc.

D. POWERS OF ENTRY

1495. Powers of entry etc.

As from a day to be appointed the following provisions have effect¹. Where an approved regulator² (the 'former authority') has its designation in relation to one or more reserved legal activities³ cancelled⁴ the Legal Services Board⁵ may request the former authority to provide assistance to the new authority⁶ and the Board, for the purpose of continuing regulation⁷.

On an application by a person appointed by the Board to act on its behalf, a judge of the High Court, circuit judge or justice of the peace may issue a warrant authorising that person to enter and search the premises of the former authority and take possession of any written or electronic records found on the premises⁸. A person so authorised may, for the purpose of continuing regulation, take copies of written or electronic records found on a search carried out by virtue of the warrant⁹. The judge or justice of the peace may not issue the warrant unless satisfied that its issue is necessary or desirable for the purpose of continuing regulation¹⁰.

1 The Legal Services Act 2007 s 79 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'approved regulator' see PARA 358.

3 As to the meaning of 'reserved legal activities' see PARA 512.

4 Ie by virtue of the Legal Services Act 2007 s 75 (see PARA 1485) or s 76 (see PARA 1486).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

6 As to the meaning of 'new authority' see the Legal Services Act 2007 s 77(9)(b); and PARA 1493 note 4 (definition applied by virtue of s 79(10)).

7 Legal Services Act 2007 s 79(1), (2). The 'purpose of continuing regulations' means the purpose of enabling bodies authorised by the former authority to continue to be authorised and regulated in relation to the protected activity: s 79(10). As to the meanings of 'authorised by the former authority' and 'protected activity' see s 77; and PARA 1493 note 4 (definition applied by s 79(10)).

8 Legal Services Act 2007 s 79(3). The Lord Chancellor must make regulations:

2204 (1) specifying further matters which a judge or justice of the peace must be satisfied of, or matters which a judge or justice of the peace must have regard to, before issuing a warrant (s 79(6)(a)); and

2205 (2) regulating the exercise of a power conferred by a warrant issued under s 79(3) or by s 79(4) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise) (s 79(6)(b)).

Regulations under s 79(6)(b) must in particular make provision as to circumstances in which written or electronic records of which a person has taken possession by virtue of a warrant issued under s 79(3) may be copied or must be returned: s 79(7). But the Lord Chancellor may not make regulations under s 79(6) unless they are made in accordance with a recommendation made by the Board or the Lord Chancellor has consulted the Board about the making of the regulations: s 79(8). At the date at which this volume states the law no such regulations had been made. The Board must make rules as to the persons it may appoint for the purposes of s 79(3): s 79(9). Such rules are non-statutory and are not set out in this work.

9 Legal Services Act 2007 s 79(4).

10 Legal Services Act 2007 s 79(5).

UPDATE

1495 Powers of entry etc

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 79(6)-(10) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(iv) Appeals/1496. Functions of appellate bodies.

(iv) Appeals

1496. Functions of appellate bodies.

As from a day to be appointed the following provisions have effect¹. The Lord Chancellor may by order establish a body to hear and determine appeals from decisions, made by a person specified in the order in the person's capacity as a licensing authority², which are appealable under the Legal Services Act 2007 Part 5³ or licensing rules made by the person⁴.

The Lord Chancellor may by order modify, or make any other provision relating to, the functions of the Solicitors Disciplinary Tribunal and the Discipline and Appeals Committee⁵ or any other body, for the purpose of enabling the body to hear and determine appeals from such decisions⁶.

The Lord Chancellor may make the above orders⁷ only if the Board has made a recommendation⁸, a draft order was annexed to the recommendation and the order is in the same form as, or not materially different from, that draft order⁹.

1 The Legal Services Act 2007 ss 80, 81 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478.

3 Ie the Legal Services Act 2007 ss 71-111.

4 Legal Services Act 2007 s 80(1)(a). An order under s 80 may:

2206 (1) make provision as to the payment of fees, and award of costs, in relation to such appeals (s 80(4)(a));

2207 (2) modify provisions made by or under any enactment (including the Legal Services Act 2007 or any Act passed after it), prerogative instrument or other instrument or document (s 80(4)(b)).

Any provision made by an order under s 80 may be expressed to be conditional upon the person specified in the order being designated by an order under Sch 10 Pt 1 (see PARAS 1479-1484) as a licensing authority in relation to one or more reserved legal activities: s 80(5). The powers to make an order conferred by s 80 are without prejudice to any powers (statutory or non-statutory) which a body may have apart from s 80: s 80(6). At the date at which this volume states the law no orders had been made under s 80. As to licensing rules see PARA 1498 et seq. As to the meaning of 'reserved legal activities' see PARA 512.

5 Ie the Discipline and Appeals Committee as established by the Council of Licensed Conveyancers under the Administration of Justice Act 1985 s 25 (see PARA 1362). As to the Solicitors Disciplinary Tribunal see PARA 906 et seq.

6 Legal Services Act 2007 s 80(1)(b), (2). See note 4.

7 Ie an order under the Legal Services Act 2007 s 80(1).

8 Ie a recommendation in accordance with the Legal Services Act 2007 s 81. A recommendation may be made under s 80 only with the consent of the person from whose decisions the appeals are to be made and where the recommendation is for an order under s 80(1)(b), the body to which appeals are to be made: s 81(1). Before making a recommendation under s 80, the Board must publish a draft of the proposed recommendation and the proposed draft order: s 81(2). The draft must be accompanied by a notice which states that representations about the proposals may be made to the Board within a specified period: s 81(3). Before

making any recommendation, the Board must have regard to any representations duly made: s 81(4). If the draft order to be annexed to the recommendation differs from the draft published under s 81(2)(b) in a way which is, in the opinion of the Board, material, the Board must, before making the recommendation, publish the draft order along with a statement detailing the changes made and the reasons for those changes: s 81(5). As to notices generally see PARA 303 note 11.

9 Legal Services Act 2007 s 80(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(v) Policy Statement/1497. Licensing authority policy statement.

(v) Policy Statement

1497. Licensing authority policy statement.

As from a day to be appointed the following provisions have effect¹. Each licensing authority² must prepare and issue a statement of policy as to how, in exercising its functions³ it will comply with the requirements⁴ to promote the regulatory objectives⁵. A licensing authority may issue such a statement only with the approval of the Legal Services Board⁶ (acting otherwise than in its capacity as a licensing authority or as an approved regulator)⁷.

A licensing authority may, with the approval of the Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator), alter or replace a statement issued under the above provisions⁸. If it does so, it must issue the altered or replacement statement⁹.

1 The Legal Services Act 2007 s 82 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478. In exercising its functions under the Legal Services Act 2007 Pt 5 (ss 71-111), a licensing authority must have regard to the statement issued by it under s 82: s 82(5).

3 Ie under the Legal Services Act 2007 Pt 5 (ss 71-111).

4 Ie the requirements under the Legal Services Act 2007 s 28 (see PARA 372) or, in the case of the Board, s 3 (see PARA 311).

5 Legal Services Act 2007 s 82(1). For the regulatory objectives see PARA 302.

6 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. A licensing authority must publish a statement issued by it under s 82: s 82(6).

7 Legal Services Act 2007 s 82(2). As to the meaning of 'approved regulator' see PARA 358.

8 Legal Services Act 2007 s 82(3).

9 Legal Services Act 2007 s 82(4).

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(vi) Licensing Rules

A. GENERALLY

1498. Licensing rules.

As from a day to be appointed the following provisions have effect¹. Licensing rules of a licensing authority² are rules as to the licensing by the authority of licensable bodies and the regulation by the licensing authority³ of licensable bodies licensed by it, and their managers and employees⁴. Licensing rules of a licensing authority must contain:

- 738 (1) appropriate qualification regulations in respect of licensable bodies to which the licensing authority proposes to issue licences under the Legal Services Act 2007 Part 5⁵;
- 739 (2) provision as to how the licensing authority, when considering the regulatory objectives⁶ in connection with an application for a licence, should take account of the objective of improving access to justice⁷;
- 740 (3) appropriate arrangements (including conduct rules, discipline rules and practice rules) under which the licensing authority will be able to regulate the conduct of bodies licensed by it, and their managers and employees⁸;
- 741 (4) appropriate indemnification arrangements⁹;
- 742 (5) appropriate compensation arrangements¹⁰;
- 743 (6) provisions for the resolution of regulatory conflict¹¹;
- 744 (7) provisions for the requirements imposed¹² in relation to the handling of complaints¹³; and
- 745 (8) any other provision required to be contained in licensing rules by the Legal Services Act 2007¹⁴.

Licensing rules made by an approved regulator have effect only at a time when the approved regulator is a licensing authority¹⁵.

1 The Legal Services Act 2007 s 83 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478.

3 As to the meaning of 'licensable body' see PARA 1477.

4 Legal Services Act 2007 s 83(4). Without prejudice to the generality of s 83(4), licensing rules of a licensing authority may contain any provision authorised by the Legal Services Act 2007: s 83(6). Licensing rules may not apply to bodies to which s 106 (see PARA 1501) applies in a way which is different from the way they apply to other bodies, except by virtue of an order under s 106: s 83(9). As to the meaning of 'manager' see PARA 369 note 17.

5 Legal Services Act 2007 s 83(5)(a). Section 83(5)-(7) is subject to s 105 (see PARAS 1509-1510, 1522) (which exempts trade unions from certain provisions) and s 106 (see PARA 1501) (which provides for the modification of licensing rules in their application to bodies to which s 106 applies): s 83(8).

6 le in compliance with its duties under the Legal Services Act 2007 s 3(2) (see PARA 311) or s 28(2) (see PARA 372). For the regulatory objectives see PARA 302.

7 Legal Services Act 2007 s 83(5)(b).

8 Legal Services Act 2007 s 83(5)(c). As to the meaning of 'conduct rules' see PARA 377 note 5. As to the meaning of 'discipline rules' see PARA 369 note 8.

9 Legal Services Act 2007 s 83(5)(d). As to the meaning of 'indemnification arrangements' see PARA 369 note 10.

10 Legal Services Act 2007 s 83(5)(e). As to the meaning of 'compensation arrangements' see PARA 369 note 11.

11 Legal Services Act 2007 s 83(5)(f). The licensing rules must contain the provisions required by ss 52, 54 (see PARAS 415, 417) (including those provisions as applied by s 103 (see PARA 1478)).

12 le the provision required by the Legal Services Act s 112 (see PARA 385) and s 145 (see PARA 378).

13 Legal Services Act 2007 s 83(5)(g).

14 Legal Services Act 2007 s 83(5)(h).

15 Legal Services Act 2007 s 83(3). This is subject to any provision made by an order under s 25 (see PARA 360). As to the meaning of 'approved regulator' see PARA 358.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/A. GENERALLY/1499. Board's duty to make licensing rules.

1499. Board's duty to make licensing rules.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board² (acting in its capacity as a licensing authority³):

- 746 (1) must make suitable licensing rules⁴ before the end of the period of 12 months beginning with the day on which a licensable body first becomes entitled to make an application to it for a licence by virtue of a decision of the Board⁵ (acting otherwise than in its capacity as a licensing authority or as an approved regulator)⁶;
- 747 (2) may make or modify its licensing rules only with the approval of the Board (acting otherwise than in its capacity as a licensing authority or as an approved regulator)⁷.

1 The Legal Services Act 2007 s 83 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 As to the meaning of 'licensing authority' see PARA 1478.

4 For this purpose 'suitable licensing rules' means licensing rules which constitute suitable regulatory arrangements in respect of licensable bodies entitled by virtue of a decision under Sch 12 to make an application to the Board for a licence: s 83(2). As to the meaning of 'suitable regulatory arrangements' see Sch 12 para 7; and PARA 1516.

5 Ie an application for a licence under the Legal Services Act 2007 Sch 12 (see PARA 1516 et seq).

6 Legal Services Act 2007 s 83(1)(a). As to the meaning of 'approved regulator' see PARA 358.

7 Legal Services Act 2007 s 83(1)(b).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/A. GENERALLY/1500. Regulatory arrangement provisions to co-operate with investigations.

1500. Regulatory arrangement provisions to co-operate with investigations.

As from a day to be appointed the following provisions have effect¹. The licensing rules made by the Legal Services Board² must make provision³:

- 748 (1) requiring each relevant authorised person⁴ to give ombudsmen⁵ all such assistance requested by them, in connection with the investigation, consideration or determination of complaints under the ombudsman scheme⁶, as that person is reasonably able to give⁷; and
- 749 (2) for the enforcement of that requirement⁸.

1 The Legal Services Act 2007 s 145 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing rules' see PARA 1498. As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 The provision made for the purposes of the Legal Services Act 2007 s 145(1) must satisfy such requirements as the Legal Services Board may, from time to time, specify for the purposes of s 145(1): s 145(2). The Board must publish any such requirements: s 145(3).

4 For these purposes 'relevant authorised person' in relation to the Board in its capacity as a licensing authority, means a person licensed by it under the Legal Services Act 2007 Pt 5 (ss 71-111): s 145(4)(b).

5 As to the meaning of 'ombudsmen' see PARA 487 note 4.

6 As to the ombudsman scheme see PARA 465.

7 Legal Services Act 2007 s 145(1)(a).

8 Legal Services Act 2007 s 145(1)(b).

UPDATE

1500 Regulatory arrangement provisions to co-operate with investigations

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 145(2), (3) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/A. GENERALLY/1501. Special bodies.

1501. Special bodies.

As from a day to be appointed the following provisions have effect¹. A licensed body² (or an applicant for a licence) which is an independent trade union, a not for profit body, a community interest company, a low-risk body³ or a body of such other description as may be prescribed by order made by the Lord Chancellor on the recommendation of the Legal Services Board⁴ may apply to the relevant licensing authority, in accordance with its licensing rules⁵, for the authority to make one or both of the following orders⁶:

- 750 (1) that the authority's licensing rules apply in relation to the body with such modifications as may be specified in the order⁷;
- 751 (2) that the provisions relating to the ownership of licensed bodies⁸ do not apply in relation to the body, or apply in relation to the body with such modifications as may be specified in the order⁹.

In deciding what order (if any) is appropriate in all the circumstances of the case, the licensing authority must in particular have regard to:

- 752 (a) the reserved legal activities and non-reserved activities which the body carries on (or proposes to carry on)¹⁰;
- 753 (b) the nature of the persons to whom the body provides (or proposes to provide) services¹¹;
- 754 (c) any non-authorised persons¹² who have an interest or an indirect interest in the licensed body or hold a material interest in the licensed body, or are managers of the body¹³; and
- 755 (d) any other matter specified in the authority's licensing rules¹⁴.

Where a licensing authority has made an order under the above provisions in relation to a body to which those provisions apply, the licensing authority must revoke that order if it becomes aware that the body in respect of which the order was made is no longer a body to which those provisions apply¹⁵.

1 The Legal Services Act 2007 ss 106-108 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensed body' see PARA 1476.

3 A body ('B') is a low risk body if the management condition and the ownership condition are satisfied in relation to it: Legal Services Act 2007 s 108(1). The management condition is that the number of managers of the body who are within s 108(4) is less than 10% of the total number of managers: s 108(2). The ownership condition is that:

2208 (1) the proportion of shares in B held by non-authorised persons or licensed bodies is less than 10% (s 108(3)(a), (4)); and

2209 (2) the proportion of the voting rights in B which such persons are entitled to exercise, or control the exercise of, is less than 10% (s 108(3)(b)); and

- 2210 (3) if B has a parent undertaking ('P') the proportion of shares in P held by such persons is less than 10% and the proportion of the voting rights in P which such persons are entitled to exercise, or control the exercise of, is less than 10% (s 108(3)(c)).

As to the meaning of 'parent undertaking' see the Financial Services and Markets Act 2000 s 420; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 351 (definition applied by the Legal Services Act 2007 s 108(5)).

4 Legal Services Act 2007 s 106(1). At the date at which this volume states the law no such orders had been made. As to the Legal Services Board see s 2; and PARAS 303-326. The licensing authority may revoke or otherwise modify an order under s 106 on the application of the body in relation to which the order was made or of its own motion: s 107(3). However it may only do so if it considers it appropriate to do so in all the circumstances of the case, having regard to the matters mentioned in s 106(5): s 107(4).

5 As to the licensing rules see PARA 1498. In the Legal Services Act 2007 Pt 5 'relevant licensing authority':

- 2211 (1) in relation to a licensed body, means the licensing authority by which the licensed body is authorised to carry on an activity which is a reserved legal activity (s 73(4)(a));

- 2212 (2) in relation to an applicant for a licence, means the licensing authority to which the application is made (s 73(4)(b)).

As to the meaning of 'licensing authority' see PARA 1478.

6 Legal Services Act 2007 s 106(2). On an application under s 106(2), the licensing authority may make any order which the authority has power to make under s 106(3) and considers appropriate in all the circumstances of the case, whether or not it is the order for which the applicant applied: s 106(4). Licensing rules must make provision about the form and manner in which applications under s 106 or s 107 are to be made: see Sch 11 paras 7, 8; and PARA 1507.

7 Legal Services Act 2007 s 106(3)(a). If the licensing authority makes an order under s 106(3), the authority's licensing rules or Sch 13 (see PARAS 1522-1543) or both (as the case may be) have effect in relation to that body in accordance with that order: s 106(6). The licensing authority may not make an order under s 106(3)(a) in relation to provisions of its licensing rules made in accordance with Sch 11 paras 2, 3 (see PARA 1503), 7, 8 (see PARA 1507), 9(3), 10(2) (see PARA 1508), 16, 18 (see PARA 1511), 23 (see PARA 1513), 24(1)-(3), (8), (10), (11), 26(2) (see PARA 1514): s 106(7). The licensing authority may not make an order under s 106(3)(a) which results in its licensing rules, as they apply in relation to the body to which the order relates, not making the provision required by s 83(5)(a)-(g), Sch 11 paras 1 (see PARA 1502), 4(3) (see PARA 1504), 6 (see PARA 1506), 20 (see PARA 1511): s 106(8). If the licensing authority's licensing rules, as they apply in relation to a body to which an order under s 106(3)(a) relates, make provision requiring the body to have a Head of Legal Practice approved by the licensing authority or a Head of Finance and Administration approved by the licensing authority, they must also provide for a review by the licensing authority of any decision by it to refuse or withdraw that approval: s 106(9).

8 In the Legal Services Act 2007 Sch 13 (see PARA see PARAS 1522-1543).

9 Legal Services Act 2007 s 106(3)(b).

10 Legal Services Act 2007 s 106(5)(a). Licensing rules may require a special body to provide the licensing authority with information relevant to the matters in s 106(5): see Sch 11 para 8(5); and PARA 1507. As to the meaning of 'reserved legal activities' see PARA 512.

11 Legal Services Act 2007 s 106(5)(b).

12 As to the meaning of 'non-authorised person' see PARA 1477 note 2.

13 Legal Services Act 2007 s 106(5)(c).

14 Legal Services Act 2007 s 106(5)(d). As to the meaning of 'manager' see PARA 369 note 17.

15 Legal Services Act 2007 s 107(1), (2). However the licensing authority may only do so if it considers it appropriate to do so in all the circumstances of the case, having regard to the matters mentioned in s 106(5): s 107(4).

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B. LICENSING PROCEDURE

1502. Applications for licences.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must make provision about the form and manner in which applications for licences are to be made, and the fee (if any) which is to accompany an application³. They may make provision about the information which applications must contain and the documents which must accompany applications⁴.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 Legal Services Act 2007 Sch 11 para 1(1). Any sum so received is payable into the Consolidated Fund: see s 175(1)(e). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

4 Legal Services Act 2007 Sch 11 para 1(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/B. LICENSING PROCEDURE/1503. Determination of applications.

1503. Determination of applications.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must make the following provision about the determination of applications for licences³. Before the end of the decision period⁴ the licensing authority must decide the application, notify the applicant of its decision and if it decides to refuse the application, set out in the notice the reasons for the refusal⁵.

Licensing rules must make provision for review by the licensing authority of:

- 756 (1) a decision to refuse an application for a licence⁶;
- 757 (2) if a licence is granted, the terms of the licence⁷.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 Legal Services Act 2007 Sch 11 para 2(1).

4 The decision period is the period of six months beginning with the day on which the application is made to the licensing authority in accordance with its licensing rules: Legal Services Act 2007 Sch 11 para 2(3). The licensing authority may, on one or more occasions, give the applicant a notice (an 'extension notice') extending the decision period by a period specified in the notice: Sch 11 para 2(4). An extension notice may only be given before the time when the decision period would end, but for the extension notice, and the total decision period must not exceed nine months: Sch 11 para 2(5). An extension notice must set out the reasons for the extension: Sch 11 para 2(6). As to the meaning of 'licensing authority' see PARA 1478. As to notices generally see PARA 303 note 11.

5 Legal Services Act 2007 Sch 11 para 2(2).

6 Legal Services Act 2007 Sch 11 para 3(a).

7 Legal Services Act 2007 Sch 11 para 3(b).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/B. LICENSING PROCEDURE/1504. Period of licence and renewal.

1504. Period of licence and renewal.

As from a day to be appointed the following provisions have effect¹. The licensing rules² may make provision:

- 758 (1) limiting the period for which any licence is³ to remain in force⁴;
- 759 (2) about the renewal of licences, including provision about the form and manner in which an application for the renewal is to be made, and the fee (if any) which is to accompany an application⁵.

The licensing rules may make provision about the information which applications for renewal must contain and the documents which must accompany applications⁶.

Licensing rules must provide that a licence issued to a licensed body by the licensing authority⁷ ceases to have effect if the licensed body is issued with a licence by another licensing authority⁸.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 This is subject to the provision of the Legal Services Act 2007 Sch 11 paras 1-8.

4 Legal Services Act 2007 Sch 11 para 4(1)(a).

5 Legal Services Act 2007 Sch 11 para 4(1)(b). Any sum so received is payable into the Consolidated Fund: see s 175(1)(e). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

6 Legal Services Act 2007 Sch 11 para 4(2).

7 As to the meaning of 'licensing authority' see PARA 1478. As to the meaning of 'licensed body' see PARA 1476.

8 Legal Services Act 2007 Sch 11 para 4(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/B. LICENSING PROCEDURE/1505. Continuity of licences.

1505. Continuity of licences.

As from a day to be appointed the following provisions have effect¹. Licensing rules² may make provision about the effect, on a licence issued to a partnership or other unincorporated body (the 'existing body'), of any change in the membership of the existing body³. The provision which may be made includes provision for the existing body's licence to be transferred where the existing body ceases to exist and another body succeeds to the whole or substantially the whole of its business⁴.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 Legal Services Act 2007 Sch 11 para 5(1).

4 Legal Services Act 2007 Sch 11 para 5(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/B. LICENSING PROCEDURE/1506. Modification of licence.

1506. Modification of licence.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must make provision about the form and manner in which applications are to be made for modification of the terms of a licence³, and the fee (if any) which is to accompany the application⁴. They may make provision as to the circumstances in which the licensing authority may modify the terms of a licence⁵ without an application being made⁶ and, if the licensing authority makes such provision, the rules must provide for review by the licensing authority of a decision under those rules⁷.

Licensing rules must also make provision for review by the licensing authority of a decision to refuse an application for modification of the terms of a licence⁸.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 Ie modification of the terms of a licence under the Legal Services Act 2007 s 86 (see PARA 1520).

4 Legal Services Act 2007 Sch 11 para 6(1). Any sum so received is payable into the Consolidated Fund: see s 175(1)(e). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

5 Ie under the Legal Services Act 2007 s 86 (see PARA 1520). As to the meaning of 'licensing authority' see PARA 1478.

6 Legal Services Act 2007 Sch 11 para 6(2).

7 Legal Services Act 2007 Sch 11 para 6(3)(b).

8 Legal Services Act 2007 Sch 11 para 6(3)(a).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/B. LICENSING PROCEDURE/1507. Special bodies.

1507. Special bodies.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must make provision about the form and manner in which applications are to be made under provisions relating to special bodies³, and the fee (if any) which is to accompany the application⁴. The rules may make provision as to the matters to which the licensing authority must have regard in determining whether to make an order under those provisions⁵, or to revoke or modify such an order⁶.

If a licensed body⁷ in relation to which an order under provisions relating to special bodies has been made⁸, becomes a special body of a different kind or ceases to be a special body, it must notify the licensing authority of that fact before the end of the relevant period⁹.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 Ie under the Legal Services Act 2007 ss 106, 107 (see PARA 1501). Licensing rules must also make provision for review by the licensing authority of: (1) a decision to refuse an application under ss 106, 107; (2) the terms of any order made under s 106 or any decision under s 107: Sch 11 para 7(3).

4 Legal Services Act 2007 Sch 11 para 7(1). Any sum so received is payable into the Consolidated Fund: see s 175(1)(e). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

5 Ie under the Legal Services Act 2007 s 106 (see PARA 1501). As to the meaning of 'licensing authority' see PARA 1478.

6 Legal Services Act 2007 Sch 11 para 7(2).

7 As to the meaning of 'licensed body' see PARA 1476.

8 Ie an order under the Legal Services Act 2007 s 106 (see PARA 1501).

9 Legal Services Act 2007 Sch 11 para 8(1)-(3). The relevant period is the period of 30 days (or such longer period as may be specified in licensing rules) beginning with the day on which the body first became a special body of a different kind, or ceased to be a special body: Sch 11 para 8(4). Licensing rules may make provision requiring a special body to provide the licensing authority with such information relevant to the matters mentioned in s 106(5) as may be specified in the licensing rules: Sch 11 para 8(5).

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C. STRUCTURAL REQUIREMENTS

1508. Management.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must require a licensed body³ to comply with the following requirement at all times⁴. At least one of the licensed body's managers must be a person (other than a licensed body) who is an authorised person in relation to a licensed activity⁵ and no manager of the licensed body may be a person who under the Legal Services Act 2007 Part 5⁶ is disqualified from acting as a manager of a licensed body⁷.

Licensing rules may make further provision as to the managers of licensed bodies and the arrangements for the management by them of the licensed body and its activities⁸. They must not require all the managers of a licensed body to be authorised persons in relation to a reserved legal activity⁹.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 As to the meaning of 'licensed body' see PARA 1476.

4 Legal Services Act 2007 Sch 11 para 9(1).

5 Legal Services Act 2007 Sch 11 para 9(2). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'manager' see PARA 369 note 17.

6 Under the Legal Services Act 2007 ss 71-111.

7 Legal Services Act 2007 Sch 11 para 9(3).

8 Legal Services Act 2007 Sch 11 para 10(1).

9 Legal Services Act 2007 Sch 11 para 10(2). As to the meaning of 'reserved legal activity' see PARA 512.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/C. STRUCTURAL REQUIREMENTS/1509. Head of Legal Practice.

1509. Head of Legal Practice.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must include the following requirements³. A licensed body⁴ must at all times have an individual who is designated as Head of Legal Practice and whose designation is approved⁵ by the licensing authority⁶.

A designation of an individual as Head of Legal Practice has effect only while the individual consents to the designation, is an authorised person in relation to one or more of the licensed activities and is not disqualified⁷ from acting as Head of Legal Practice of a licensed body⁸.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 Legal Services Act 2007 Sch 11 para 11(1).

4 As to the meaning of 'licensed body' see PARA 1476.

5 The licensing authority may approve a person's designation only if it is satisfied that the person is a fit and proper person to carry out the duties imposed by the Legal Services Act 2007 s 91 (see PARA 1545) in relation to that body: Sch 11 para 11(4). Licensing rules must make provision about the procedures and criteria that will be applied by the licensing authority when determining under Sch 11 para 11(4) whether an individual is a fit and proper person: Sch 11 para 12(1)(a). They must also make provision for a review by the licensing authority of a determination under Sch 11 para 11(4) that an individual is not a fit and proper person: Sch 11 para 12(1)(b). If the licensing authority is satisfied that the person designated as a licensed body's Head of Legal Practice has breached a duty imposed by s 91 (see PARA 1545), it may withdraw its approval of that person's designation: Sch 11 para 11(6). Licensing rules must make provision about the procedures and criteria that will be applied by the licensing authority in determining under Sch 11 para 11(6) whether to withdraw its approval and for a review of that determination under Sch 11 para 11(6) to withdraw its approval: Sch 11 para 12(1)(c), (d). The licensing authority may approve a person's designation in the course of determining an application for a licence under s 84 (see PARA 1515 et seq): Sch 11 para 11(5). As to the duties of the Head of Legal Practice see PARA 1545.

6 Legal Services Act 2007 Sch 11 para 11(2). Licensing rules must make provision about the procedure which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of Sch 11 para 11(2): Sch 11 para 12(1)(e). Such rules may in particular provide that the requirement imposed by virtue of Sch 11 para 11(2) is suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules: Sch 11 para 12(2). Schedule 11 paras 11, 12 do not apply in relation to a licensed body which is an independent trade union: s 105(1). As to the meaning of 'licensing authority' see PARA 1478.

7 Is disqualified under the Legal Services Act 2007 Pt 5 (ss 71-111). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

8 Legal Services Act 2007 Sch 11 para 11(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(2) LICENSING AUTHORITIES/(vi) Licensing Rules/C. STRUCTURAL REQUIREMENTS/1510. Head of Finance and Administration.

1510. Head of Finance and Administration.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must include the following requirements³. A licensed body⁴ must at all times have an individual who is designated as Head of Finance and Administration and whose designation is approved⁵ by the licensing authority⁶.

A designation of an individual as Head of Finance and Administration has effect only while the individual consents to the designation and is not disqualified⁷ from acting as Head of Finance and Administration of a licensed body⁸.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 Legal Services Act 2007 Sch 11 para 13(1).

4 As to the meaning of 'licensed body' see PARA 1476.

5 The licensing authority may approve a person's designation only if it is satisfied that the person is a fit and proper person to carry out the duties imposed by s 92 (see PARA 1546) in relation to that body: Sch 11 para 13(4). Licensing rules must make provision about the procedures and criteria that will be applied by the licensing authority when determining under Sch 11 para 13(4) whether an individual is a fit and proper person: Sch 11 para 14(1)(a). Licensing rules must also make provisions for a review by the licensing authority of a determination that an individual is not a fit and proper person: Sch 11 para 14(1)(b). If the licensing authority is satisfied that the person designated as a licensed body's Head of Finance and Administration has breached a duty imposed by s 92, it may withdraw its approval of that person's designation: Sch 11 para 13(6). Licensing rules must make provision about the procedures and criteria that will be applied by the licensing authority in determining under Sch 11 para 13(6) whether to withdraw its approval and for a review by the licensing authority of such a determination to withdraw its approval: Sch 11 para 14(1)(c), (d). The licensing authority may approve a person's designation in the course of determining an application for a licence under s 84 (see PARA 1515): Sch 11 para 13(5). As to the duties of the Head of Finance and Administration see PARA 1546.

6 Legal Services Act 2007 Sch 11 para 13(2). Licensing rules must make provision about the procedure which is to apply where a licensed body ceases to comply with the requirement imposed by virtue of Sch 11 para 13(2): Sch 11 para 14(1)(e). Such rules may in particular provide that the requirement imposed by virtue of Sch 11 para 13(2) is suspended until such time as may be specified by the licensing authority if the licensed body complies with such other requirements as may be specified in the rules: Sch 11 para 14(2). Schedule 11 paras 13, 14 do not apply in relation to a licensed body which is an independent trade union: s 105(1). As to the meaning of 'licensing authority' see PARA 1478.

7 Is disqualified under the Legal Services Act 2007 Part 5 (ss 71-111).

8 Legal Services Act 2007 Sch 11 para 13(3).

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D. PRACTICE REQUIREMENTS

1511. Practice requirements.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must provide that a licensed body may carry on a licensed activity³ only through a person who is entitled to carry on the activity⁴. They must also include a provision that a licensed body must at all times have suitable arrangements in place to ensure that it, and its managers and employees, comply with the duties imposed on them⁵ and it, and any manager or employee of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity⁶, maintain the professional principles⁷.

Licensing rules must require a licensed body, other than one which is a company or a limited liability partnership and the registered office of which is situated in England and Wales (or in Wales), at all times to have a practising address⁸ in England and Wales⁹.

The rules must include a requirement that a licensed body may not employ a person who is disqualified¹⁰ from being an employee of a licensed body¹¹.

The licensing rules must make provision as to the treatment of money (including money held on trust) which is received, held or dealt with by the licensed body, its managers and employees for clients or other persons, and the keeping of accounts in respect of such money¹².

For the purpose of giving effect to indemnification arrangements and compensation arrangements¹³, licensing rules may:

- 760 (1) authorise or require the licensing authority to establish and maintain a fund or funds¹⁴;
- 761 (2) authorise or require the licensing authority to take out and maintain insurance with authorised insurers¹⁵;
- 762 (3) require licensed bodies or licensed bodies of any specific description to take out and maintain insurance with authorised insurers¹⁶.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing rules see PARA 1498.

3 As to the meaning of 'licensed body' see PARA 1476.

4 Legal Services Act 2007 Sch 11 para 16.

5 ie the duties imposed by the Legal Services Act 2007 s 176 (see PARA 384).

6 As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515. As to the meaning of 'manager' see PARA 369 note 17.

7 Legal Services Act 2007 Sch 11 para 17(1)-(3). As to the professional principles see PARA 302 note 13.

8 For this purpose 'practising address', in relation to a licensed body, means an address from which the body provides services which consist of or include the carrying on of reserved legal activities: Legal Services Act 2007 Sch 11 para 15(2).

9 Legal Services Act 2007 Sch 11 para 15(1), (3).

10 He is disqualified under the Legal Services Act 2007 Pt 5 (ss 71-111).

11 Legal Services Act 2007 Sch 11 para 18.

12 Legal Services Act 2007 Sch 11 para 20. The Head of Finance and Administration is responsible for ensuring compliance with Sch 11 para 20: see s 92; and PARA 1546. Where a licensed body carries on an activity through a solicitor the rules made under Sch 11 para 20 apply instead of those made under the Solicitors Act 1974 ss 32-34 (see PARA 835) and where a licensed body carries on an activity through a licensed conveyancer, the rules made under the Legal Services Act 2007 Sch 11 para 20 apply instead of those made under the Administration of Justice Act 1985 ss 22-23 (see PARAS 1353, 1357): Legal Services Act 2007 s 104.

13 As to the meaning of 'compensation arrangements' see PARA 369 note 11. As to the meaning of 'indemnification arrangements' see PARA 369 note 10.

14 Legal Services Act 2007 Sch 11 para 19(1)(a). As to the meaning of 'licensing authority' see PARA 1478.

15 Legal Services Act 2007 Sch 11 para 19(1)(b). As to the meaning of 'authorised insurer' see s 64; PARA 369 (definition applied by Sch 11 para 19(2)).

16 Legal Services Act 2007 Sch 11 para 19(1)(c).

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E. REGULATION

1512. Fees and financial penalties.

As from a day to be appointed the following provisions have effect¹. The licensing rules must require licensed bodies² to pay periodical fees to the licensing authority³. The rules may provide for the payment of different fees by different descriptions of licensed body⁴.

The licensing rules must make provision as to the acts and omissions in respect of which the licensing authority may impose a penalty⁵, the criteria and procedure to be applied by the licensing authority in determining whether to impose such a penalty and the amount of any penalty⁶.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing rules' see PARA 1478. As to the meaning of 'licensed body' see PARA 1476.

3 Legal Services Act 2007 Sch 11 para 21(1). Any sum so received is payable into the Consolidated Fund: see s 175(1)(e). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

4 Legal Services Act 2007 Sch 11 para 21(2).

5 Ie under the Legal Services Act 2007 s 95 (see PARA 1547).

6 Legal Services Act 2007 Sch 11 para 22.

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1513. Disqualification.

As from a day to be appointed the following provisions have effect¹. Licensing rules² must make provision as to the criteria and procedure to be applied by the licensing authority³ in determining whether a person should be disqualified under the relevant provision⁴.

Licensing rules must make provision:

- 763 (1) for a review by the licensing authority of a determination by the licensing authority that a person should be disqualified⁵;
- 764 (2) as to the criteria and procedure to be applied by the licensing authority in determining whether a person's disqualification should cease to be in force⁶;
- 765 (3) requiring the licensing authority to notify the Legal Services Board⁷ of any determination by the licensing authority that a person should be disqualified, of the results of any review of that determination, and of any decision by the licensing authority that a person's disqualification should cease to be in force⁸.

1 The Legal Services Act 2007 Sch 11 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing rules' see PARA 1498.

3 As to the meaning of 'licensing authority' see PARA 1478.

4 Legal Services Act 2007 Sch 11 para 23(1). The relevant provision mentioned in the text is s 99 (see PARA 1548).

5 Legal Services Act 2007 Sch 11 para 23(2)(a).

6 Legal Services Act 2007 Sch 11 para 23(2)(b).

7 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

8 Legal Services Act 2007 Sch 11 para 23(2)(c).

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1514. Suspension or revocation of licence.

As from a day to be appointed the following provisions have effect¹. A licensing authority may, in accordance with its licensing rules², suspend or revoke any licence granted by it under the Legal Services Act 2007 Part 5³. Licensing rules must make the following provision⁴. The licensing authority may suspend or revoke a licensed body's licence⁵ in particular cases⁶. Before suspending or revoking a licence in accordance with those cases, the licensing authority must give the licensed body notice of its intention⁷.

The licensing authority may not suspend or revoke the licence before the end of the period of 28 days beginning with the day on which the notice is given to the licensed body (or any longer period specified in the notice)⁸.

1 The Legal Services Act 2007 s 101, Sch 11 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478. As to licensing rules see PARA 1498.

3 Legal Services Act 2007 s 101(1). A licence is to be treated as not being in force at any time while it is suspended under s 101: s 101(2).

4 Legal Services Act 2007 Sch 11 para 24(1).

5 It may suspend or revoke the licence under the Legal Services Act 2007 s 101. Licensing rules may make provision about other circumstances in which the licensing authority may exercise its power under s 101 to suspend or revoke a licence: Sch 11 para 25. Licensing rules must make provision about the criteria and procedure the licensing authority will apply in deciding whether to suspend or revoke a licence, or to end the suspension of a licence, under s 101: Sch 11 para 26(1). They must make provision for a review by the licensing authority of a decision by the licensing authority to suspend or revoke a licence: Sch 11 para 26(2). As to the meaning of 'licensed body' see PARA 1476.

6 Legal Services Act 2007 Sch 11 para 24(2). The first case is that the licensed body becomes a body which is not a licensable body: Sch 11 para 24(3). The second case is that the licensed body fails to comply with licensing rules that require a licensed body to carry on a licensed activity only through a person who is entitled to carry on the activity: Sch 11 para 24(4). The third case is that:

2213 (1) a non-authorised person holds a restricted interest in the licensed body:

28. (a) as a result of the person taking a step in circumstances where that constitutes an offence under Sch 13 para 24(1) (see PARA 1530) (whether or not the person is charged with or convicted of an offence under those provisions) (Sch 13 para 24(5)(a)(i));
28

29. (b) in breach of conditions imposed under Sch 13 para 17 (see PARA 1528), Sch 13 para 28 (see PARA 1533), or Sch 13 para 33 (see PARA 1535) (Sch 13 para 24(5)(a)(ii)); or
29

30. (c) the person's holding of which is subject to an objection by the licensing authority under Sch 13 para 31 (see PARA 1534) or Sch 13 para 36 (see PARA 1536) (Sch 11 para 24(5)(a)(iii));
30

2214 (2) if the relevant licensing rules make the provision mentioned in Sch 13 para 38(1)(a) (see PARA 1537), a non-authorised person has under those rules a shareholding in the licensed

body, or a parent undertaking of the licensed body, which exceeds the share limit (Sch 11 para 24(5)(b));

2215 (3) if the relevant licensing rules make the provision mentioned in Sch 13 para 38(1)(b) (see PARA 1537), a non-authorised person has under those rules an entitlement to exercise, or control the exercise of, voting rights in the licensed body or a parent undertaking of the licensed body which exceeds the voting limit (Sch 11 para 24(5)(c));

2216 (4) if the relevant licensing rules make the provision mentioned in Sch 13 para 38(1)(c) (see PARA 1537), the total proportion of shares in the licensed body or a parent undertaking of the licensed body held by non-authorised persons exceeds the limit specified in the rules (Sch 11 para 24(5)(d)); or

2217 (5) if the relevant licensing rules make the provision mentioned in Sch 13 para 38(1)(d) (see PARA 1537), the total proportion of voting rights in the licensed body or a parent undertaking of the licensed body which non-authorised persons are entitled to exercise, or control the exercise of, exceeds the limit specified in the rules (Sch 11 para 24(5)(e)).

The fourth case is that a non-authorised person subject to the duty in s 90 (see PARA 1544) in relation to the licensed body fails to comply with that duty: Sch 11 para 24(6). The fifth case is that the licensed body, or a manager or employee of the licensed body, fails to comply with the duties imposed by s 176 (see PARA 384): Sch 11 para 24(7). The sixth case is that the licensed body fails to comply with licensing rules made under Sch 11 para 9(3) (see PARA 1508) or Sch 11 para 18 (see PARA 1511) and the manager or employee concerned was disqualified as a result of breach of a duty within s 99(4)(c) or (d) (see PARA 1548): Sch 11 para 24(8). The seventh case is that the licensed body is unable to comply with licensing rules made under Sch 11 para 11 (requirement for Head of Legal Practice) (see PARA 1509) or Sch 11 para 13 (requirement for Head of Finance and Administration) (see PARA 1510): Sch 11 para 24(9). As to the meaning of 'non-authorised person' see PARA 1477 note 2. As to the meaning of 'restricted interest' see PARA 1522 note 3. As to the meaning of 'manager' see PARA 369 note 17.

7 Legal Services Act 2007 Sch 11 para 24(10). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 Sch 11 para 24(11).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(3) LICENSING/(i) Application/A. LICENSING AUTHORITIES GENERALLY/1515. Application to a licensing authority.

(3) LICENSING

(i) Application

A. LICENSING AUTHORITIES GENERALLY

1515. Application to a licensing authority.

As from a day to be appointed the following provisions have effect¹. A licensing authority other than the Legal Services Board² must determine any application for a licence which is made to it³. A licensing authority may not grant an application for a licence unless it is satisfied that if the licence is granted the applicant will comply with its licensing rules⁴.

If the licensing authority grants an application for a licence, it must issue the licence as soon as reasonably practicable⁵ and the licence has effect from the date on which it is issued⁶.

¹ The Legal Services Act 2007 s 84 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the Legal Services Board's determination of applications in its capacity as a licensing authority see PARA 1517. As to licensing authorities see PARA 1478 et seq. As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

³ Legal Services Act 2007 s 84(1). References in s 84 to an application for a licence are to an application for a licence which is made to a licensing authority by a licensable body, in accordance with the authority's licensing rules and accompanied by the required application fee (if any): s 84(6).

⁴ Legal Services Act 2007 s 84(3). As to licensing rules see PARA 1498 et seq.

⁵ Legal Services Act 2007 s 84(4).

⁶ Legal Services Act 2007 s 84(5). A certificate signed by an officer of a licensing authority appointed for the purpose and stating one of the matters within s 88(2) is, unless the contrary is proved, evidence of the facts stated in the certificate: s 88(1). The matters are that any person does or does not, or did or did not at any time, hold a licence granted by the licensing authority under Pt 5 (ss 71-111): s 88(2). A certificate purporting to be so signed is to be taken to have been so signed unless the contrary is proved: s 88(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(3) LICENSING/(i) Application/A. LICENSING AUTHORITIES GENERALLY/1516. Licensing authority's duty to determine its suitability.

1516. Licensing authority's duty to determine its suitability.

As from a day to be appointed the following provisions have effect¹. A licensable body may apply to each competent licensing authority² for:

- 766 (1) a determination as to whether the authority has suitable regulatory arrangements³;
- 767 (2) a statement as to whether the authority has made a particular application⁴ and if it has, a determination as to whether, if the application is granted, the authority will have suitable regulatory arrangements⁵.

A licensable body may apply to each potentially competent licensing authority for a determination as to whether it will have suitable regulatory arrangements in place if it becomes a competent licensing authority⁶.

A competent (or potentially competent) licensing authority to which an application is made under the above provisions⁷ must make the determination before the end of the decision period⁸ or, if it requires the licensable body to provide it with information⁹, the period of 28 days beginning with the day on which the information is provided¹⁰.

1 The Legal Services Act 2007 Sch 12 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensable body' see PARA 1477. As to the meaning of 'competent licensing authority' see PARA 1517 note 10. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 Legal Services Act 2007 Sch 12 para 3(1)(a). 'Suitable regulatory arrangements', in relation to a licensable body and a competent licensing authority, means regulatory arrangements which are suitable in relation to the licensable body, having regard to:

2218 (1) the composition of the licensable body, including in particular the following matters:

- 31. (a) the kinds of authorised persons who are managers of, or have an interest in, the licensable body (Sch 12 para 7(1)(a), (2)(a));
31
- 32. (b) the proportion of persons who are managers of, or have an interest in, the licensable body who are authorised persons or authorised persons of a particular kind (Sch 12 para 7(1)(a), (2)(b));
32
- 33. (c) the kinds of non-authorised persons who are managers of, or have an interest in, the licensable body (Sch 12 para 7(1)(a), (2)(c));
33
- 34. (d) the proportion of persons who are managers of, or have an interest in, the licensable body who are non-authorised persons or non-authorised persons of a particular kind (Sch 12 para 7(1)(a), (2)(d)); and
34
- 35. (e) the kinds of non-authorised persons who have an indirect interest in the licensable body (Sch 12 para 7(1)(a), (2)(e));
35

2219 (2) the services the licensable body proposes to provide (Sch 12 para 7(2));

2220 (3) if the licensable body proposes to carry on non-reserved activities, any regulation to which the carrying on of such activities is subject (Sch 12 para 7(3));

2221 (4) the persons to whom the licensable body proposes to provide services (Sch 12 para 7(4)).

In head (1)(a)-(e) above 'authorised person' means a person who is an authorised person in relation to any activity which is a reserved legal activity and authorised persons are of different kinds if they are authorised to carry on such activities by different approved regulators: Sch 12 para 7(3). As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'non-authorised person' see PARA 1477 note 2. As to the meaning of 'manager' see PARA 369 note 17.

4 le an application as mentioned in the Legal Services Act 2007 Sch 12 para 1(4)(b) (see PARA 1517).

5 Legal Services Act 2007 Sch 12 para 3(1)(b). A competent (or potentially competent) licensing authority to which a licensable body makes an application under Sch 12 para 3(1) or Sch 12 para 3(2) may require the licensable body to provide it with such information in relation to the licensable body as it may specify: Sch 12 para 3(3). The authority may specify only information which it reasonably requires for the purpose of making the determination applied for: Sch 12 para 3(4). 'Potentially competent licensing authority', in relation to a licensable body, means an approved regulator:

2222 (1) which has made an application to the Board under Sch 10 paras 1-16 (see PARAS 1479-1484) for a recommendation that the Lord Chancellor make a relevant designation order, and whose application has not been determined (Sch 12 para 6(1)(a)); or

2223 (2) in respect of which the Board has made such a recommendation, but in respect of which no relevant designation order (or decision not to make such an order) has been made by the Lord Chancellor (Sch 12 para 6(1)(b)).

A relevant designation order is an order designating the approved regulator as a licensing authority in respect of one or more reserved legal activities and the effect of which will be that the approved regulator becomes a competent licensing authority in relation to the licensable body: Sch 12 para 6(2).

6 Legal Services Act 2007 Sch 12 para 3(2). See note 5.

7 le under the Legal Services Act 2007 Sch 12 para 3(1) or Sch 12 para 3(2).

8 The decision period, in relation to an application under the Legal Services Act 2007 Sch 12 para 3(1) or Sch 12 para 3(2), is the period of 28 days beginning with the day on which the application is made: Sch 12 para 3(6).

9 le information under the Legal Services Act 2007 Sch 12 para 3(3) (see note 5).

10 Legal Services Act 2007 Sch 12 para 3(5).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(3) LICENSING/(i) Application/B. LEGAL SERVICES BOARD/1517. Application to the Board.

B. LEGAL SERVICES BOARD

1517. Application to the Board.

As from a day to be appointed the following provisions have effect¹. The Legal Services Board (acting in its capacity as a licensing authority)² may determine an application for a licence³ which is made to it only if the applicant is entitled to make the application by virtue of a decision of the Board⁴ (acting otherwise than in its capacity as a licensing authority)⁵.

A licensable body⁶ may apply to the Legal Services Board⁷ for a decision that the body is entitled to make an application for a licence to the Board acting in its capacity as a licensing authority⁸. Such an application may be made on one of the following grounds⁹:

- 768 (1) that there is no competent licensing authority¹⁰ and there is no potentially competent licensing authority¹¹;
- 769 (2) that:
- 43
- 44. (a) each competent licensing authority has determined that it does not have suitable regulatory arrangements¹²;
- 45. (b) if one or more competent licensing authorities have made an application to the Board¹³ for the approval of alterations of their regulatory arrangements, each of those authorities has determined that it will not have suitable regulatory arrangements if the application is granted¹⁴; and
- 46. (c) each potentially competent licensing authority has determined that it will not have suitable regulatory arrangements if it becomes a competent licensing authority¹⁵;
- 44
- 770 (3) that the body has made an application for a licence to each competent licensing authority which has suitable regulatory arrangements and no such licensing authority is prepared to grant the body a licence on terms which are appropriate to that body, having regard to certain matters¹⁶.

1 The Legal Services Act 2007 s 84, Sch 12 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to licensing authorities see PARA 1478 et seq.

3 References in the Legal Services Act 2007 s 84 to an application for a licence are to an application for a licence which is made to a licensing authority by a licensable body, in accordance with the authority's licensing rules and accompanied by the required application fee (if any): s 84(6).

4 Ie a decision under the Legal Services Act 2007 Sch 12 (see text and notes 6-16).

5 Legal Services Act 2007 s 84(2). As to applications to licensing authorities generally see PARA 1515.

6 As to the meaning of 'licensable body' PARA 1477.

7 In the Legal Services Act 2007 Sch 12 references to the Legal Services Board, unless otherwise stated, are to the Board acting otherwise than in its capacity as a licensing authority or an approved regulator: Sch 12 para 4. As to licensing authorities see PARA 1478 et seq. As to the meaning of 'approved regulator' see PARA 358.

8 Legal Services Act 2007 Sch 12 para 1(1).

9 Legal Services Act 2007 Sch 12 para 1(2).

10 'Competent licensing authority', in relation to a licensable body, means an approved regulator designated as a licensing authority in relation to each reserved legal activity which the licensable body proposes to carry on: Legal Services Act 2007 Sch 12 para 5. As to the meaning of 'reserved legal activity' see PARA 512.

11 Legal Services Act 2007 Sch 12 para 1(3). As to the meaning of 'potentially competent licensing authority' see PARA 1516 note 5.

12 Legal Services Act 2007 Sch 12 para 1(4)(a). As to the meaning of 'suitable regulatory arrangements' see PARA 1516 note 3.

13 Legal Services Act 2007 Sch 12 para 1(4)(b).

14 Legal Services Act 2007 Sch 12 para 1(4)(c).

15 Legal Services Act 2007 Sch 12 para 1(4)(d).

16 Legal Services Act 2007 Sch 12 para 1(5). This ground applies only to licensable bodies within the Legal Services Act 2007 Sch 12 para 1(6), ie:

2224 (1) a not for profit body (Sch 12 para 1(6)(a));

2225 (2) a community interest company (Sch 12 para 1(6)(b));

2226 (3) an independent trade union (Sch 12 para 1(6)(c));

2227 (4) if an order under s 106(1)(e) (see PARA 1501) so provides in relation to a description of body prescribed under s 106 of that description (Sch 12 para 1(6)(d)).

'Certain matters' refers to matters in the Legal Services Act 2007 s 106(5)(a)-(c) (see PARA 1501) and any other matters specified in rules made by the Board for the purposes of Sch 12 para 1(5)(a).

UPDATE

1517 Application to the Board

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 84(2) (in part), Sch 12 para 4 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(3) LICENSING/(i) Application/B. LEGAL SERVICES BOARD/1518. Board's decision.

1518. Board's decision.

As from a day to be appointed the following provisions have effect¹. On an application for a decision that a licensable body² is entitled to make an application for a licence³ the Legal Services Board⁴ must, before the end of the decision period⁵, decide whether the licensable body is entitled to make an application for a licence to the Board acting in its capacity as a licensing authority⁶.

The Board must give a notice to the licensable body stating its decision and giving reasons for its decision⁷.

The Board must make rules providing for a review of its decision⁸. The rules may in particular provide that if the Board decides to grant the application, the Board may review that decision if the ground on which the application was granted ceases to be made out before the Board (in its capacity as a licensing authority) determines any application for a licence made by the licensable body⁹.

1 The Legal Services Act 2007 Sch 12 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensable body' see PARA 1477.

3 Is an application under the Legal Services Act 2007 Sch 12 para 1 (see PARA 1517).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. See also PARA 1517 note 7.

5 The decision period is:

2228 (1) in relation to an application on the first ground, the period of 14 days beginning with the day on which the application is made (Legal Services Act 2007 Sch 12 para 2(2)(a));

2229 (2) in relation to an application on the second ground, the period of 28 days beginning with the day on which the application is made (Sch 12 para 2(2)(b)); and

2230 (3) in relation to an application on the third ground, the period of 60 days beginning with the day on which the application is made (Sch 12 para 2(2)(c)).

6 Legal Services Act 2007 Sch 12 para 2(1). As to licensing authorities see PARA 1478 et seq.

7 Legal Services Act 2007 Sch 12 para 2(3). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 Sch 12 para 2(4). Such rules are non-statutory and are not set out in this work.

9 Legal Services Act 2007 Sch 12 para 2(5).

UPDATE

1518 Board's decision

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 12 para 2(4), (5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(3) LICENSING/(ii) Licence Terms/1519. Terms of licence.

(ii) Licence Terms

1519. Terms of licence.

As from a day to be appointed the following provisions have effect¹. A licence² must specify the activities which are reserved legal activities and which the licensed body³ is authorised to carry on by virtue of the licence and any conditions subject to which the licence is granted⁴.

In the case of a licensing authority other than the Legal Services Board⁵, the licence may authorise the licensed body to carry on activities which are reserved legal activities only if the licensing authority is designated in relation to the reserved legal activities in question⁶.

A licence may be granted subject to such other conditions as the licensing authority considers appropriate⁷. Those conditions may include conditions as to the non-reserved activities which the licensed body may or may not carry on⁸.

1 The Legal Services Act 2007 s 85 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 I.e a licence issued under the Legal Services Act 2007 s 84 (see PARAS 1515, 1517).

3 As to the meaning of 'reserved legal activities' see PARA 512. As to the meaning of 'licensed body' see PARA 1476.

4 Legal Services Act 2007 s 85(1). If an order under s 106 (see PARA 1501) has been made in relation to the licensed body, the licence must also specify the terms of the order: s 85(2). In Pt 5 (ss 71-111) references to the terms of the licence are to the matters listed in s 85(1), (2): s 85(8).

5 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. As to licensing authorities see PARA 1478 et seq.

6 Legal Services Act 2007 s 85(3).

7 Legal Services Act 2007 s 85(6). A licence must be granted subject to the condition that any obligation which may from time to time be imposed on the licensed body or a person within s 85(5) by or under the licensing authority's licensing rules is complied with and any other obligations imposed on the licensed body or a person within s 85(5) by or under the Legal Services Act 2007 or any other enactment (whether passed before or after the Legal Services Act 2007) are complied with: s 85(4). The persons mentioned in s 85(4) are the managers and employees of a licensed body, and non-authorised persons having an interest or an indirect interest, or holding a material interest, in the licensed body (in their capacity as such): s 85(5). As to the meaning of 'non-authorised person' see PARA 1477 note 2. As to the meaning of 'manager' see PARA 369 note 17.

8 Legal Services Act 2007 s 85(7).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(3) LICENSING/(ii) Licence Terms/1520. Modification of terms.

1520. Modification of terms.

As from a day to be appointed the following provisions have effect¹. A licensing authority² may modify the terms of a licence³ granted by it:

- 771 (1) if the licensed body⁴ applies to the licensing authority, in accordance with its licensing rules, for it to do so⁵;
- 772 (2) in such other circumstances as may be specified in its licensing rules⁶.

A licensing authority modifies the terms of a licensed body's licence by giving the licensed body notice in writing of the modifications and the modifications have effect from the time the licensing authority gives the licensed body the notice or such later time as may be specified in the notice⁷.

1 The Legal Services Act 2007 s 86 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing authorities see PARA 1478 et seq.

3 The reference to terms of the licence is to the matters listed in the Legal Services Act 2007 (see PARA 1519): see s 85(8).

4 As to the meaning of 'licensed body' see PARA 1476. If a licensed body is a body to which s 106 applies (see PARA 1501), the licensing authority may modify the terms of its licence in accordance with s 106 and s 107 (see PARA 1501): s 86(2).

5 Legal Services Act 2007 s 86(1)(a). The licensing authority's power under s 86 is subject to s 85(3), (4) (see PARA 1519) and licensing rules made under Sch 11 para 6 (see PARA 1506): s 86(4).

6 Legal Services Act 2007 s 86(1)(b). Licensing rules must make provisions for the modification of licences: see Sch 11 para 6; and PARA 1506.

7 Legal Services Act 2007 s 86(3). As to notices generally see PARA 303 note 11.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(3) LICENSING/(iii) Registers/1521. Registers of licensed bodies.

(iii) Registers

1521. Registers of licensed bodies.

As from a day to be appointed the following provisions have effect¹. Each licensing authority² must keep a register containing the names and places of business of all bodies which hold or have held licences granted by the licensing authority³. Where any licence held by a body is for the time being suspended, the licensing authority must cause that fact to be noted in the register in the entry for that body⁴.

A licensing authority must provide facilities for making the information contained in the entries in its register available for inspection by any person during office hours and without payment⁵.

1 The Legal Services Act 2007 s 87 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing authorities see PARA 1478 et seq.

3 Legal Services Act 2007 s 87(1). The Legal Services Board may make rules about the register to be kept by the Board under s 87 and the register to be kept under s 87 by each licensing authority designated under Sch 10 Pt 1: s 87(4). Rules under s 87(4) may in particular prescribe any further information which must be contained in an entry in the register in relation to a licensed body or former licensed body: s 87(5). Such rules are non-statutory and are not set out in this work. As to the meaning of 'licensed body' see PARA 1476.

4 Legal Services Act 2007 s 87(2).

5 Legal Services Act 2007 s 87(3).

UPDATE

1521 Registers of licensed bodies

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 s 87(4), (5) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(i) Introduction/1522. Restricted interests subject to approval.

(4) OWNERSHIP AND REGULATION OF LICENSED BODIES

(i) Introduction

1522. Restricted interests subject to approval.

As from a day to be appointed the following provisions have effect¹. The holding by a non-authorised person² of a restricted interest in a licensed body³ is subject to the approval of the relevant licensing authority⁴ in accordance with provisions of the Legal Services Act 2007⁵.

However in relation to a licensed body which is a partnership⁶ the holding by a non-authorised person of a restricted interest in the body without the approval of the relevant licensing authority does not make it unlawful for the business of the partnership to be carried on or for the partners to carry it on in partnership⁷.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'non-authorised person' see PARA 1477 note 2.

3 As to the meaning of 'licensed body' see PARA 1476. 'Restricted interest' means each of the following:

2231 (1) a material interest (Legal Services Act 2007 Sch 13 para 2(1)(a));

2232 (2) if licensing rules are made by the relevant licensing authority under Sch 13 para 2(2), a controlled interest (Sch 13 para 2(1)(b)).

Licensing rules may specify that a controlled interest is a restricted interest for the purposes of Sch 13: Sch 13 para 2(2).

For the purposes of Pt 5 (ss 71-111), a person holds a material interest in a body ('B') if the person:

2233 (a) holds at least 10% of the shares in B (Sch 13 para 3(1)(a));

2234 (b) is able to exercise significant influence over the management of B by virtue of the person's shareholding in B (Sch 13 para 3(1)(b));

2235 (c) holds at least 10% of the shares in a parent undertaking ('P') of B (Sch 13 para 3(1)(c));

2236 (d) is able to exercise significant influence over the management of P by virtue of the person's shareholding in P (Sch 13 para 3(1)(d));

2237 (e) is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B (Sch 13 para 3(1)(e));

2238 (f) is able to exercise significant influence over the management of B by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in B (Sch 13 para 3(1)(f));

2239 (g) is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P (Sch 13 para 3(1)(g));

- 2240 (h) is able to exercise significant influence over the management of P by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P (Sch 13 para 3(1)(h)).

Licensing rules made by the relevant licensing authority may provide that the references in heads (a)-(h) above to 10% are to have effect as references to such lesser percentage as may be specified in the rules: Sch 13 para 3(2)(a). They may also provide that in relation to a partnership, for the purposes of Pt 5 (ss 71-111) a person has a material interest in the partnership if he is a partner (whether or not the person has a material interest by virtue of Sch 13 para 3(1)): Sch 13 para 3(2)(b). Such rules are non-statutory and are not set out in this work. The Lord Chancellor may, on the recommendation of the Legal Services Board, by order modify Sch 13 para 3: Sch 13 para 9(a).

For the purposes of Sch 13 material interests held by virtue of different heads of heads (a)-(h) are restricted interests of different kinds: Sch 13 para 3(4).

For the purposes of Sch 13 a person holds a controlled interest in a body ('B') if the person:

- 2241 (i) holds at least x% of the shares in B (Sch 13 para 4(1)(a));
- 2242 (ii) holds at least x% of the shares in a parent undertaking ('P') of B (Sch 13 para 4(1)(b));
- 2243 (iii) is entitled to exercise, or control the exercise of, at least x% of the voting rights in B (Sch 13 para 4(1)(c)); or
- 2244 (iv) is entitled to exercise, or control the exercise of, at least x% of the voting rights in P (Sch 13 para 4(1)(d)).

For the purposes of heads (i)-(iv) above 'x' means such percentage as may be specified in licensing rules made by the relevant licensing authority under Sch 13 para 2(2): Sch 13 para 4(3). Licensing rules made under Sch 13 para 2(2) may specify more than one percentage and any such percentage must be greater than 10% or, if the relevant licensing authority makes licensing rules under Sch 13 para 3(2)(a), the percentage specified in those rules: Sch 13 para 4(4), (5).

For the purposes of Sch 13 controlled interests held by virtue of different heads of heads (i)-(iv) above are restricted interests of different kinds: Sch 13 para 4(6)(a). For the purposes of Sch 13 if licensing rules made under Sch 13 para 2(2) specify more than one percentage, controlled interests held by virtue of each of those percentages are restricted interests of different kinds: Sch 13 para 4(6)(b).

For the purposes of Sch 13 paras 3(1), 4(1) 'person' means the person, any of the person's associates or the person and any of the person's associates taken together: Sch 13 paras 3(3), 4(2). The Lord Chancellor may, on the recommendation of the Legal Services Board, by order modify Sch 13 para 4(2): Sch 13 para 9(b).

For the purpose of Sch 13 'associate' in relation to a person ('A') and a shareholding in a body ('S') or an entitlement to exercise or control the exercise of voting power in a body ('V'), means a person listed below: Sch 13 para 5(1). The persons are:

- 2245 (A) the spouse or civil partner of A (Sch 13 para 5(2)(a));
- 2246 (B) a child or stepchild of A (if under 18) (Sch 13 para 5(2)(b));
- 2247 (C) the trustee of any settlement under which A has a life interest in possession (in Scotland a life interest) (Sch 13 para 5(2)(c));
- 2248 (D) an undertaking of which A is a director (Sch 13 para 5(2)(d));
- 2249 (E) an employee of A (Sch 13 para 5(2)(e));
- 2250 (F) a partner of A (except, where S or V is a partnership in which A is a partner, another partner in S or V) (Sch 13 para 5(2)(f));
- 2251 (G) if A is an undertaking, a director of A, a subsidiary undertaking of A or a director or employee of such a subsidiary undertaking (Sch 13 para 5(2)(g));
- 2252 (H) if A has with any other person an agreement or arrangement with respect to the acquisition, holding or disposal of shares or other interests in S or V (whether or not they are interests within the meaning of s 72(3) (see PARA 1477)), that other person (Sch 13 para 5(2)(h)); or

- 2253 (i) if A has with any other person an agreement or arrangement under which they undertake to act together in exercising their voting power in relation to S or V, that person (Sch 13 para 5(2)(i)).

For the purpose of head (c) above 'settlement' means any disposition or arrangement under which property is held on trust (or subject to a comparable obligation): Sch 13 para 5(3). As to the meanings of 'parent undertaking' and 'subsidiary undertaking' see the Financial Services and Markets Act 2000 s 420; and **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 351 (definitions applied by the Legal Services Act 2007 Sch 13 para 5(4)). 'Voting power', in relation to a body which does not have general meetings at which matters are decided by the exercise of voting rights, means the right under the constitution of the body to direct the overall policy of the body or alter the terms of its constitution: Sch 13 para 5(4). The Lord Chancellor may, on the recommendation of the Legal Services Board, by order modify Sch 13 para 5: Sch 13 para 9(b). At the date at which this volume states the law no such orders had been made.

4 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. As to licensing authorities see PARA 1478 et seq.

5 Legal Services Act 2007 Sch 13 para 1(1). The provisions mentioned in the text are Sch 13. Schedule 13 does not apply in relation to an application for a licence or a licensed body which is an independent trade union: s 105(2).

6 le for the purposes of the Partnership Act 1890 s 34 (see **PARTNERSHIP** vol 79 (2008) PARA 178).

7 Legal Services Act 2007 Sch 13 para 1(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(i) Introduction/1523. Approval requirements.

1523. Approval requirements.

As from a day to be appointed the following provisions have effect¹. The approval requirements are met in relation to a person's holding of a restricted interest² if:

- 773 (1) the person's holding of that interest does not compromise the regulatory objectives³;
- 774 (2) the person's holding of that interest does not compromise compliance with the duties of regulated persons⁴ by the licensed body⁵ or persons to any employee or manager of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity⁶; and
- 775 (3) the person is otherwise a fit and proper person to hold that interest⁷.

Licensing rules must make provision about the procedures that will be applied by the licensing authority when determining whether it is satisfied of the matters mentioned in heads (1) to (3) above⁸.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'restricted interest' see PARA 1522 note 3. If all the approval condition are met unconditional approval may be given: see PARA 1527. Otherwise conditions may be applied: see PARA 1528.

3 Legal Services Act 2007 Sch 13 para 6(1)(a). For the regulatory objectives see PARA 302. In determining whether it is satisfied of the matters mentioned in heads (1) to (3) in the text, the licensing authority must in particular have regard to:

- 2254 (1) the person's probity and financial position (Sch 13 para 6(3)(a));
- 2255 (2) whether the person is disqualified as mentioned in s 100(1) (see PARA 1548) or included in the list kept by the Legal Services Board under Sch 13 para 51 (see PARA 1543) (Sch 13 para 6(3)(c));
- 2256 (3) the person's associates (Sch 13 para 6(3)(c)); and
- 2257 (4) any other matter which may be specified in licensing rules (Sch 13 para 6(3)(d)).

The Lord Chancellor may, on the recommendation of the Legal Services Board, by order modify Sch 13 para 6(3)(c): Sch 13 para 9(d).

4 the duties imposed by the Legal Services Act 2007 s 176 (see PARA 384).

5 As to the meaning of 'licensed body' see PARA 1476.

6 Legal Services Act 2007 Sch 13 para 6(1)(b), (2). As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515. As to the meaning of 'manager' see PARA 369 note 17.

7 Legal Services Act 2007 Sch 13 para 6(1)(c).

8 Legal Services Act 2007 Sch 13 para 6(4). Such rules are non-statutory and are not set out in this work. As to licensing authorities see PARA 1478 et seq.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(i) Introduction/1524. Approval of multiple restricted interests.

1524. Approval of multiple restricted interests.

As from a day to be appointed the following provisions have effect¹. The following provisions apply if a person ('P') holds a kind of restricted interest² in a body ('B') by virtue of:

- 776 (1) holding a particular percentage of the shares in B³; or
- 777 (2) a parent undertaking of B or an entitlement to exercise, or control the exercise of, a particular percentage of the voting rights in B or a parent undertaking of B⁴.

If the relevant licensing authority⁵ approves P's holding of that interest, it is to be treated as also approving P's holding of any lesser restricted interest in B held by P⁶.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'restricted interest' see PARA 1522 note 3.

3 Legal Services Act 2007 Sch 13 para 7(1)(a).

4 Legal Services Act 2007 Sch 13 para 7(1)(b).

5 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. As to licensing authorities see PARA 1478 et seq.

6 Legal Services Act 2007 Sch 13 para 7(2). A lesser restricted interest is a kind of restricted interest held by P by virtue of holding a smaller percentage of the shares mentioned in Sch 13 para 7(1)(a) or an entitlement to exercise, or control the exercise of, a smaller percentage of the voting rights mentioned in Sch 13 para 7(1)(b): Sch 13 para 7(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(ii) Approval of Restricted Interests on Application for Licence/1525. Requirement to identify non-authorised persons.

(ii) Approval of Restricted Interests on Application for Licence

1525. Requirement to identify non-authorised persons.

As from a day to be appointed the following provisions have effect¹. Where a body applies to a licensing authority² for a licence it must identify in its application:

- 778 (1) any non-authorised person who holds a restricted interest³ in the body or
whom the body expects to hold such an interest when the licence is issued⁴; and
- 779 (2) the kind of restricted interest held, or expected to be held, by that person⁵.

If, before the licence is issued, there is any change in the identity of the non-authorised persons within head (1) or the kind of restricted interest held, or expected to be held, by him, the applicant must inform the relevant licensing authority⁶ within such period as may be specified by order made by the Lord Chancellor on the recommendation of the Legal Services Board⁷.

It is an offence for a person to fail to comply with a requirement imposed on them under the above provisions⁸.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing authorities see PARA 1478 et seq.

3 As to the meaning of 'non-authorised person' see PARA 1477 note 2. As to the meaning of 'restricted interest' see PARA 1522 note 3. Where an applicant for a licence identifies a non-authorised person to a licensing authority in accordance with the Legal Services Act 2007 Sch 13 para 10 or Sch 13 para 12, it must give that person a notice stating that it has applied for a licence and identified the person to the licensing authority in accordance with those provisions and explaining the effect of Sch 13 para 14: Sch 13 para 13(1). A person who fails to comply with a requirement imposed on them by Sch 13 para 13(1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 13(2), (3). A licensing authority may require a non-authorised person identified to it in accordance with Sch 13 para 10 or Sch 13 para 12 to provide it with such documents and information as it may require: Sch 13 para 14(1). It is an offence for a person who is required to provide information or documents under Sch 13 para 14(1) knowingly to provide false or misleading information or documents: Sch 13 para 14(2). A person who is guilty of such an offence is liable on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment, to a term of imprisonment not exceeding two years or a fine (or both): Sch 13 para 14(3). As to notices generally see PARA 303 note 11. As to the standard scale see PARA 571 note 1. As to the statutory maximum see PARA 553 note 6.

4 Legal Services Act 2007 Sch 13 para 10(1)(a).

5 Legal Services Act 2007 Sch 13 para 10(1)(b).

6 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5.

7 Legal Services Act 2007 Sch 13 para 10(2). At the date at which this volume states the law no such orders had been made. As to the Legal Services Board see s 2; and PARAS 303-326. If a person under a duty to notify imposed by Sch 13 para 10 had no knowledge of the facts by virtue of which that duty arose but subsequently

becomes aware of those facts, the person must give the licensing authority the required notification within such period, after the person becomes so aware, as may be specified by order made by the Lord Chancellor on the recommendation of the Board: Sch 13 para 12(1), (2). A person who fails to comply with the duty to notify imposed by Sch 13 para 12(2) is guilty of an offence: Sch 13 para 12(3). A person who is guilty of an offence under Sch 13 para 12(3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 12(4).

8 Legal Services Act 2007 Sch 13 para 11(1). A person who is guilty of an offence under Sch 13 para 11(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 11(2). It is a defence for a person charged with an offence under Sch 13 para 11(1) to show that at the time of the alleged offence the person had no knowledge of the facts by virtue of which the duty to notify arose: Sch 13 para 11(3).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(ii) Approval of Restricted Interests on Application for Licence/1526. Licence may not be granted unless non-authorised persons approved.

1526. Licence may not be granted unless non-authorised persons approved.

As from a day to be appointed the following provisions have effect¹. Where an applicant for a licence (the 'applicant') gives the licensing authority notification² in relation to one or more non-authorised persons³ the licensing authority may not grant the application for a licence unless, in relation to each non-authorised person in respect of which the notification is given (the 'investor'), it approves the investor's holding of the restricted interest⁴ to which the notification relates (the 'notified interest')⁵.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 The notification under the Legal Services Act 2007 Sch 13 paras 10-12 (see PARA 1525). As to licensing authorities see PARA 1478 et seq.

3 As to the meaning of 'non-authorised person' see PARA 1477 note 2.

4 As to the meaning of 'restricted interest' see PARA 1522 note 3.

5 Legal Services Act 2007 Sch 13 para 15(1), (2). Schedule 13 para 15(2) does not apply in relation to a non-authorised person who does not hold the notified interest when the licence is issued: Sch 13 para 15(3). In Sch 13 paras 10-20 'applicant', 'investor' and 'notified interest' are to be construed in accordance with Sch 13 para 15: Sch 13 para 15(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(ii) Approval of Restricted Interests on Application for Licence/1527. Unconditional approval of notified interest.

1527. Unconditional approval of notified interest.

As from a day to be appointed the following provisions have effect¹. If the licensing authority² is satisfied that the approval requirements³ are met in relation to the investor's holding of the notified interest⁴, it must approve the investor's holding of that interest without conditions⁵. If the licensing authority approves the investor's holding of the notified interest without conditions, it must notify the investor and the applicant⁶ of its approval as soon as reasonably practicable⁷.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing authorities see PARA 1478 et seq.

3 As to the approval requirements see PARA 1523.

4 As to the meanings of 'investor' and 'notified interest' see PARA 1526.

5 Legal Services Act 2007 Sch 13 para 16(1).

6 As to the meaning of 'applicant' see PARA 1526.

7 Legal Services Act 2007 Sch 13 para 16(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(ii) Approval of Restricted Interests on Application for Licence/1528. Conditional approval of notified interest.

1528. Conditional approval of notified interest.

As from a day to be appointed the following provisions have effect¹. If the licensing authority² is not satisfied that the approval requirements³ are met in relation to the investor's holding of the notified interest⁴, it may approve the investor's holding of the notified interest subject to conditions⁵. However, it may do so only if it considers that, if the conditions are complied with, it will be appropriate for the investor to hold the notified interest without the approval requirements being met⁶.

If the licensing authority proposes to approve the investor's holding of the notified interest subject to conditions it must give the investor and the applicant a warning notice⁷.

If the licensing authority approves the investor's holding of the notified interest subject to conditions, it must notify the investor and the applicant of its approval as soon as reasonably practicable⁸.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing authorities see PARA 1478 et seq.

3 As to the approval requirements see PARA 1523.

4 As to the meanings of 'investor' and 'notified interest' see PARA 1526.

5 Legal Services Act 2007 Sch 13 para 17(1). A person whose holding of a restricted interest in a licensed body is subject to a condition imposed under Sch 13 para 17 may apply to the relevant licensing authority for the condition to be varied or cancelled: Sch 13 para 35(1). However the licensing authority may on its own initiative cancel a condition under Sch 13 para 17: Sch 13 para 35(2). If the licensing authority does cancel such a condition it must notify the person and the licensed body as soon as reasonably practicable: Sch 13 para 35(3). As to the meaning of 'relevant licensing authority' see PARA 1501 note 5.

6 Legal Services Act 2007 Sch 13 para 17(2).

7 Legal Services Act 2007 Sch 13 para 17(3). As to the meaning of 'applicant' see PARA 1526. The warning notice must specify the nature of the conditions proposed and the reasons for their imposition and state that representations may be made to the licensing authority within the prescribed period: Sch 13 para 17(4). The licensing authority must consider any representations made within the prescribed period: Sch 13 para 17(5). For the purposes of Sch 13 'prescribed' means prescribed by rules made by the Legal Services Board for the purposes of Sch 13: Sch 13 para 8. Such rules are non-statutory and are not set out in this work. As to notices generally see PARA 303 note 11.

The investor and the applicant may before the end of the prescribed period appeal to the relevant appellate body against the imposition of any or all of the conditions: Sch 13 para 18(1). The relevant appellate body may dismiss the appeal, or allow the appeal and order the licensing authority to approve the investor's holding of the notified interest without conditions, or subject to such conditions as may be specified in the order, or remit the matter to the licensing authority: Sch 13 para 18(2). A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court: Sch 13 para 18(3). The High Court may make such order as it thinks fit: Sch 13 para 18(4). If the investor's holding of the notified interest is subject to conditions as a result of an order made on an appeal under Sch 13 para 18, for the purposes of Sch 13 the conditions are to be treated as having been imposed under Sch 13 para 17: Sch 13 para 18(5).

7 Legal Services Act 2007 Sch 13 para 17(6). The notice must specify the reasons for the imposition of the conditions, and explain the effect of Sch 13 paras 41-51 (see PARAS 1538-1543): Sch 13 para 17(7).

UPDATE

1528 Conditional approval of notified interest

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 paras 8, 17(4)(b) (in part), (5) (in part), 18(1) (in part), (3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(ii) Approval of Restricted Interests on Application for Licence/1529. Objection to notified interest.

1529. Objection to notified interest.

As from a day to be appointed the following provisions have effect¹. If the licensing authority² is not satisfied that the approval requirements³ are met in relation to the investor's holding of the notified interest, it may object to the investor's holding of that interest⁴.

If the licensing authority proposes to object to the investor's holding of the notified interest, it must give the investor and the applicant a warning notice⁵.

If the licensing authority objects to the investor's holding of the notified interest, it must notify the investor and the applicant of its objection as soon as reasonably practicable⁶.

The investor and the applicant may before the end of the prescribed period appeal to the relevant appellate body against the objection⁷. The relevant appellate body may dismiss the appeal, or allow the appeal and:

- 780 (1) order the licensing authority to approve the investor's holding of the notified interest without conditions, or subject to such conditions as may be specified in the order⁸; or
- 781 (2) remit the matter to the licensing authority⁹.

A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court¹⁰. The High Court may make such order as it thinks fit¹¹.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing authorities see PARA 1478 et seq.

3 As to the meaning of 'approval requirements' see PARA 1523.

4 Legal Services Act 2007 Sch 13 para 19(1). As to the meanings of 'investor' and 'notified interest' see PARA 1526.

5 Legal Services Act 2007 Sch 13 para 19(2). The warning notice must specify the reasons for the proposed objection and state that representations may be made to the licensing authority within the prescribed period: Sch 13 para 19(3). For the purposes of Sch 13 'prescribed' means prescribed by rules made by the Legal Services Board for the purposes of Sch 13: Sch 13 para 8. Such rules are non-statutory and are not set out in this work. The licensing authority must consider any representations made within the prescribed period: Sch 13 para 19(4). As to the meaning of 'applicant' see PARA 1526. As to notices generally see PARA 303 note 11.

6 Legal Services Act 2007 Sch 13 para 19(5). The notice must specify the reasons for the objection and explain the effect of Sch 13 paras 41-51 (see PARAS 1538-1543): Sch 13 para 19(6).

7 Legal Services Act 2007 Sch 13 para 20(1).

8 Legal Services Act 2007 Sch 13 para 20(2)(a). If the investor's holding of the notified interest is subject to conditions as a result of an order made on an appeal under Sch 13 para 20, for the purposes of Sch 13 the conditions are to be treated as having been imposed under Sch 13 para 17 (see PARA 1528): Sch 13 para 20(5).

9 Legal Services Act 2007 Sch 13 para 20(2)(b).

10 Legal Services Act 2007 Sch 13 para 20(3).

11 Legal Services Act 2007 Sch 13 para 20(4).

UPDATE

1529 Objection to notified interest

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 paras 8, 19(3)(b) (in part), (4) (in part), 20(1) (in part), (3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iii) Approval of Restricted Interests after Licence is Issued/1530. Continuing notification.

(iii) Approval of Restricted Interests after Licence is Issued

1530. Continuing notification.

As from a day to be appointed the following provisions have effect¹. The following apply where a non-authorised person (the 'investor')²:

- 782 (1) proposes to take a step which would result in the investor acquiring a
restricted interest in a licensed body³ (or, if the investor already has one or more
kinds of restricted interest, acquiring an additional kind of restricted interest)⁴; or
783 (2) acquires such an interest in a licensed body without taking such a step⁵.

Where head (1) applies the investor must notify the licensed body and the relevant licensing authority of the proposal⁶. If a person under such a duty to notify⁷ had no knowledge of the facts by virtue of which that duty arose but subsequently becomes aware of those facts, the person must give the licensed body and the licensing authority the required notification within such period, after the person becomes so aware, as may be specified by order made by the Lord Chancellor on the recommendation of the Legal Services Board⁸.

Where head (2) applies the investor must notify the licensed body and the relevant licensing authority of the acquisition within such period, after the investor becomes aware of it, as may be specified by order made by the Lord Chancellor on the recommendation of the Board⁹.

The relevant licensing authority must, following receipt of a notification under the above provisions¹⁰ or if the licensing authority becomes aware that an investor has failed to comply with a notification requirement imposed by those provisions, determine which steps¹¹ to take¹².

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'non-authorised person' see PARA 1477 note 2. As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. In the Legal Services Act 2007 Sch 13 paras 21-37 references to 'investor' are to be construed in accordance with Sch 13 para 21 and references to a notifiable interest are to the restricted interest which the investor will have as a result of the step the investor proposes to take (or has as a result of the acquisition which has taken place): Sch 13 para 21(4).

3 As to the meaning of 'restricted interest' see PARA 1522 note 3. As to the meaning of 'licensed body' see PARA 1476.

4 Legal Services Act 2007 Sch 13 para 21(1)(a).

5 Legal Services Act 2007 Sch 13 para 21(1)(b).

6 Legal Services Act 2007 Sch 13 para 21(2). It is an offence for a person to fail to comply with a requirement imposed by Sch 13 para 21(2) and a person who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 22(1)(a), (2). It is however a defence to show that at the time of the alleged offence the person had no knowledge of the facts by virtue of which the duty to notify arose: Sch 13 para 22(3). It is an offence for a non-authorised person, who under Sch 13 para 21(2) is required to notify the licensed body and the relevant licensing authority of a proposal to take a step, to take the step, unless the relevant licensing authority has approved the investor's holding of the

notifiable interest under Sch 13 para 27 (see PARA 1532) or Sch 13 para 28 (see PARA 1533): Sch 13 para 24(1). If Sch 13 para 22(3) applies, the reference in Sch 13 para 24(1) to Sch 13 para 21(2) is to be read as a reference to Sch 13 para 23(2): Sch 13 para 24(2). A person who is guilty of an offence under Sch 13 para 24(1) is liable on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment, to a term of imprisonment not exceeding two years or a fine (or both): Sch 13 para 24(3). As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. As to the standard scale see PARA 571 note 1. As to the statutory maximum see PARA 553 note 6.

7 le the duty to notify imposed by the Legal Services Act 2007 Sch 13 para 21(2).

8 Legal Services Act 2007 Sch 13 para 23(1), (2). At the date at which this volume states the law no such orders had been made. A person who fails to comply with the duty to notify imposed by Sch 13 para 23(2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 23(4). As to the Legal Services Board see s 2; and PARAS 303-326.

9 Legal Services Act 2007 Sch 13 para 21(3). At the date at which this volume states the law no such orders had been made. It is an offence for a person to fail to comply with a requirement imposed by Sch 13 para 21(3) and a person who is guilty of such an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 22(1)(b), (2).

10 le following receipt of a notification under the Legal Services Act 2007 Sch 13 para 21(2) or Sch 13 para 21(3) or Sch 13 para 23(2).

11 The steps are:

2258 (1) to approve the investor's holding of the notifiable interest unconditionally under the Legal Services Act 2007 Sch 13 para 27 (see PARA 1532) (Sch 13 para 25(3)(a));

2259 (2) to warn the investor under Sch 13 para 28(3) (see PARA 1533) that it proposes to approve the investor's holding of the notifiable interest subject to conditions (Sch 13 para 25(3)(b));

2260 (3) to approve under Sch 13 para 28(4) (see PARA 1533) the investor's holding of the notifiable interest subject to conditions (Sch 13 para 25(3)(c));

2261 (4) to warn the investor under Sch 13 para 31(2) (see PARA 1534) that it proposes to object to the investor's holding of the notifiable interest (Sch 13 para 25(3)(d)); or

2262 (5) to object under Sch 13 para 31(3) (see PARA 1534) to the investor's holding of the notifiable interest (Sch 13 para 25(3)(e)).

12 Legal Services Act 2007 Sch 13 para 25(1). The licensing authority must make the determination within such period as may be prescribed. 'Prescribed' means prescribed by rules made by the Board for the purposes of Sch 13: Sch 13 para 8. Such rules are non-statutory and are not set out in this work.

UPDATE

1530 Continuing notification

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 paras 8, 25(2) (in part) is 1 January 2009: SI 2008/3149.

NOTE 12--Duty to make determination within prescribed period is under Legal Services Act 2007 Sch 13 para 25(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iii) Approval of Restricted Interests after Licence is Issued/1531. Licensing authority's power to require information.

1531. Licensing authority's power to require information.

As from a day to be appointed the following provisions have effect¹. A licensing authority² may require the investor³ to provide it with such documents and information as it may require⁴. It is an offence for a person who is required to provide such information or documents knowingly to provide false or misleading information or documents⁵.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to licensing authorities and the meaning of 'licensing authority' see PARA 1478 et seq.

3 As to the meaning of 'investor' see PARA 1526.

4 Legal Services Act 2007 Sch 13 para 26(1).

5 Legal Services Act 2007 Sch 13 para 26(2). A person who is guilty of an offence under Sch 13 para 26(2) is liable on summary conviction, to a fine not exceeding the statutory maximum and on conviction on indictment, to a term of imprisonment not exceeding two years or a fine (or both): Sch 13 para 26(3). As to the statutory maximum see PARA 553 note 6.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iii) Approval of Restricted Interests after Licence is Issued/1532. Unconditional approval of notifiable interest.

1532. Unconditional approval of notifiable interest.

As from a day to be appointed the following provisions have effect¹. If the licensing authority² is satisfied that the approval requirements³ are met in relation to the investor's⁴ holding of the notifiable interest, it must approve the investor's holding of that interest without conditions⁵. If the licensing authority approves the investor's holding of the notifiable interest without conditions, it must notify the investor and the licensed body of its approval as soon as reasonably practicable⁶.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the approval requirements see PARA 1523.

4 As to the meaning of 'investor' see PARA 1526.

5 Legal Services Act 2007 Sch 13 para 27(1). In a case falling within Sch 13 para 21(1)(a) (see PARA 1530) the licensing authority's approval under Sch 13 para 27 remains effective only if the investor acquires the notifiable interest before the end of such period as may be specified in the notice under Sch 13 para 27(2) or if no such period is specified before the end of the period of one year beginning with the date of that notice: Sch 13 para 30.

6 Legal Services Act 2007 Sch 13 para 27(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iii) Approval of Restricted Interests after Licence is Issued/1533. Conditional approval of notified interest.

1533. Conditional approval of notified interest.

As from a day to be appointed the following provisions have effect¹. If the licensing authority² is not satisfied that the approval requirements³ are met in relation to the investor's⁴ holding of the notifiable interest, it may approve the investor's holding of that interest subject to conditions⁵. It may do so only if it considers that, if the conditions are complied with, it will be appropriate for the investor to hold the notifiable interest without the approval requirements being met⁶.

If the licensing authority proposes to approve the investor's holding of the notifiable interest subject to conditions it must give the investor and the licensed body a warning notice⁷. But the licensing authority may approve the investor's holding of the notifiable interest subject to conditions without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives⁸.

If the licensing authority approves the investor's holding of the notifiable interest subject to conditions, it must notify the investor and the licensed body of its approval as soon as reasonably practicable⁹.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the approval requirements see PARA 1523.

4 As to the meaning of 'investor' see PARA 1526.

5 Legal Services Act 2007 Sch 13 para 28(1). In a case falling within Sch 13 para 21(1)(a) (see PARA 1530) the licensing authority's approval under Sch 13 para 28 remains effective only if the investor acquires the notifiable interest before the end of such period as may be specified in the notice under Sch 13 para 28(7) or if no such period is specified before the end of the period of one year beginning with the date of that notice: Sch 13 para 30.

6 Legal Services Act 2007 Sch 13 para 28(2). A person whose holding of a restricted interest in a licensed body is subject to a condition imposed under Sch 13 para 28 may apply to the relevant licensing authority for the condition to be varied or cancelled: Sch 13 para 35(1). However the licensing authority may on its own initiative cancel a condition under Sch 13 para 28: Sch 13 para 35(2). If the licensing authority does cancel such a condition it must notify the person and the licensed body as soon as reasonably practicable: Sch 13 para 35(3). As to the meaning of 'relevant licensing authority' see PARA 1501 note 5.

7 Legal Services Act 2007 Sch 13 para 28(3). The warning notice must specify the nature of the conditions proposed and the reasons for their imposition and state that representations may be made to the licensing authority within the prescribed period: Sch 13 para 28(5). The licensing authority must consider any representations made within the prescribed period: Sch 13 para 28(6). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 Sch 13 para 28(4). As to the regulatory objectives see PARA 302.

9 Legal Services Act 2007 Sch 13 para 28(7). The notice must specify the reasons for the imposition of the conditions and (if the investor already holds the notifiable interest) the time from which they have effect and explain the effect of Sch 13 paras 41-51: Sch 13 para 28(8). The investor and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the imposition of any or all the conditions: Sch 13 para 29(1). The relevant appellate body may dismiss the appeal, or allow the appeal and

order the licensing authority to approve the investor's holding of the notifiable interest without conditions, or subject to such conditions as may be specified in the order, or remit the matter to the licensing authority: Sch 13 para 29(2). A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court: Sch 13 para 29(3). The High Court may make such order as it thinks fit: Sch 13 para 29(4). If the investor's holding of the notifiable interest is subject to conditions as a result of an order made on an appeal under Sch 13 para 29, for the purposes of Sch 13 the conditions are to be treated as having been imposed under Sch 13 para 28: Sch 13 para 29(5).

UPDATE

1533 Conditional approval of notified interest

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 para 29(1) (in part), (3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iii) Approval of Restricted Interests after Licence is Issued/1534. Objection to acquisition of notifiable interest.

1534. Objection to acquisition of notifiable interest.

As from a day to be appointed the following provisions have effect¹. If the licensing authority² is not satisfied that the approval requirements³ are met in relation to the investor's⁴ holding of the notifiable interest, it may object to the investor's holding of that interest⁵. If the licensing authority proposes to object to the investor's holding of the notifiable interest, it must give the investor and the licensed body a warning notice⁶. But the licensing authority may object to the investor's holding of the notifiable interest without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives⁷.

If the licensing authority objects to the investor's holding of the notifiable interest, it must notify the investor and the licensed body of its objection as soon as reasonably practicable⁸.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the approval requirements see PARA 1523.

4 As to the meaning of 'investor' see PARA 1526.

5 Legal Services Act 2007 Sch 13 para 31(1).

6 Legal Services Act 2007 Sch 13 para 31(2). The warning notice must specify the reasons for the proposed objection and state that representations may be made to the licensing authority within the prescribed period: Sch 13 para 31(4). The licensing authority must consider any representations made within the prescribed period: Sch 13 para 31(5). As to notices generally see PARA 303 note 11.

7 Legal Services Act 2007 Sch 13 para 31(3). As to the regulatory objectives see PARA 302.

8 Legal Services Act 2007 Sch 13 para 31(6). The notice must specify the reasons for the objection and explain the effect of Sch 13 paras 41-51: Sch 13 para 31(7). The investor and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the objection: Sch 13 para 32(1). The relevant appellate body may dismiss the appeal, or allow the appeal and:

2263 (1) order the licensing authority to approve the investor's holding of the notifiable interest without conditions, or subject to such conditions as may be specified in the order (Sch 13 para 32(2)(a)); or

2264 (2) remit the matter to the licensing authority (Sch 13 para 32(2)(b)).

A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court: Sch 13 para 32(3). The High Court may make such order as it thinks fit: Sch 13 para 32(4). If the investor's holding of the notifiable interest is subject to conditions as a result of an order made on an appeal under Sch 13 para 32, for the purposes of Sch 13 the conditions are to be treated as having been imposed under Sch 13 para 28 (see PARA 1533): Sch 13 para 32(5).

UPDATE

1534 Objection to acquisition of notifiable interest

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 paras 31(4)(b) (in part), (5) (in part), 32(1) (in part), (3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iii) Approval of Restricted Interests after Licence is Issued/1535. Imposition of conditions on existing restricted interest.

1535. Imposition of conditions on existing restricted interest.

As from a day to be appointed the following provisions have effect¹. The relevant licensing authority² may impose conditions (or further conditions) on a person's holding of a restricted interest in a licensed body³ (or a restricted interest of a particular kind) if it is not satisfied that the approval requirements⁴ are met in relation to the person's holding of that interest or it is satisfied that a condition imposed⁵ on the person's holding of that interest has not been, or is not being, complied with⁶.

If the licensing authority proposes to impose conditions (or further conditions) on the person's holding of the restricted interest, it must give the person and the licensed body a warning notice⁷. But the licensing authority may impose conditions (or further conditions) on the person's holding of the restricted interest without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives⁸.

If the licensing authority imposes conditions (or further conditions) on the person's holding of the restricted interest, it must notify the person and the licensed body as soon as reasonably practicable⁹.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the meaning of 'restricted interest' see PARA 1522 note 3. As to the meaning of 'licensed body' see PARA 1476.

4 As to the approval requirements see PARA 1523.

5 If a condition imposed under the Legal Services Act 2007 Sch 13 para 17 (see PARA 1528) or Sch 13 para 28 (see PARA 1533) or Sch 13 para 33: Sch 13 para 33(1).

6 Legal Services Act 2007 Sch 13 para 33(1). The licensing authority may act under Sch 13 para 33(1) only:

2265 (1) if it considers that, if the conditions are complied with, it will be appropriate for the investor to hold the restricted interest without the approval requirements being met (Sch 13 para 33(2)(a)); and

2266 (2) before the end of such period (beginning with the time when the licensing authority becomes aware of the matters in question) as may be prescribed (Sch 13 para 33(2)(b)).

As to the meaning of 'investor' see PARA 1526. A person whose holding of a restricted interest in a licensed body is subject to a condition imposed under Sch 13 para 33 may apply to the relevant licensing authority for the condition to be varied or cancelled: Sch 13 para 35(1). However the licensing authority may on its own initiative cancel a condition under Sch 13 para 33: Sch 13 para 35(2). If the licensing authority does cancel such a condition it must notify the person and the licensed body as soon as reasonably practicable: Sch 13 para 35(3).

7 Legal Services Act 2007 Sch 13 para 33(3). The warning notice must specify the nature of the conditions proposed and the reasons for their imposition and state that representations may be made to the licensing authority within the prescribed period: Sch 13 para 33(5). The licensing authority must consider any

representations made within the prescribed period: Sch 13 para 33(6). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 Sch 13 para 33(4).

9 Legal Services Act 2007 Sch 13 para 33(7). The notice must specify the reasons for the imposition of the conditions, and the time from which they are to take effect, and explain the effect of Sch 13 paras 41-51: Sch 13 para 33(8). The person and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against any or all of the conditions (or further conditions): Sch 13 para 34(1). The relevant appellate body may dismiss the appeal, or allow the appeal and modify or quash the conditions imposed by the licensing authority under Sch 13 para 33 or remit the matter to the licensing authority: Sch 13 para 34(2). A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court: Sch 13 para 34(3). The High Court may make such order as it thinks fit: Sch 13 para 34(4). If the person's holding of the restricted interest is subject to any conditions as a result of an order made on an appeal, for the purposes of Sch 13 those conditions are to be treated as having been imposed under Sch 13 para 33: Sch 13 para 34(5).

UPDATE

1535 Imposition of conditions on existing restricted interest

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 paras 33(2)(b) (in part), (5)(b) (in part), (6) (in part), 34(1) (in part), (3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iii) Approval of Restricted Interests after Licence is Issued/1536. Objection to existing restricted interest.

1536. Objection to existing restricted interest.

As from a day to be appointed the following provisions have effect¹. The relevant licensing authority² may object to a person's holding of a restricted interest in a licensed body³ (or a restricted interest of a particular kind) if it is not satisfied that the approval requirements are met in relation to the person's holding of that interest or it is satisfied that a condition imposed⁴ on the person's holding of the interest has not been, or is not being, complied with⁵.

If the licensing authority proposes to object to a person's holding of the restricted interest, it must give the person and the licensed body a warning notice⁶. But the licensing authority may object to the person's holding of the restricted interest without giving a warning notice if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives⁷.

If the licensing authority objects to the person's holding of the restricted interest, it must notify the person and the licensed body of its objection as soon as reasonably practicable⁸.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the meaning of 'restricted interest' see PARA 1522 note 3. As to the meaning of 'licensed body' see PARA 1476.

4 I.e. a condition imposed under the Legal Services Act 2007 Sch 13 para 17 (see PARA 1528), Sch 13 para 28 (see PARA 1533) or Sch 13 para 33 (see PARA 1535).

5 Legal Services Act 2007 Sch 13 para 36(1). The licensing authority may act under Sch 13 para 36(1) only before the end of such period (beginning with the time when the licensing authority becomes aware of the matters in question) as may be prescribed: Sch 13 para 36(2).

6 Legal Services Act 2007 Sch 13 para 36(3). The warning notice must specify the reasons for the proposed objection and state that representations may be made to the licensing authority within the prescribed period: Sch 13 para 36(5). The licensing authority must consider any representations made within the prescribed period: Sch 13 para 36(6).

7 Legal Services Act 2007 Sch 13 para 36(4). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 Sch 13 para 36(7). The notice must specify the reasons for the objection and explain the effect of Sch 13 paras 41-51: Sch 13 para 36(8). The person and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the objection: Sch 13 para 37(1). The relevant appellate body may dismiss or allow the appeal: Sch 13 para 37(2). If the relevant appellate body allows the appeal it may also order the licensing authority to impose under Sch 13 para 33 such conditions on the person's holding of the restricted interest as may be specified in the order or remit the matter to the licensing authority: Sch 13 para 37(3). A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court: Sch 13 para 37(4). The High Court may make such order as it thinks fit: Sch 13 para 37(5). If the person's holding of the restricted interest is subject to conditions as a result of an order made on an appeal under Sch 13 para 37, for the purposes of Sch 13 the conditions are to be treated as having been imposed under Sch 13 para 33: Sch 13 para 37(6).

UPDATE

1536 Objection to existing restricted interest

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 paras 36(2) (in part), (5)(b) (in part), (6) (in part), 37(1) (in part), (4) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(iv) Additional Restrictions/1537. Power to impose share limit, voting limit etc.

(iv) Additional Restrictions

1537. Power to impose share limit, voting limit etc.

As from a day to be appointed the following provisions have effect¹. Licensing rules² may provide that:

- 784 (1) a non-authorised person³ may not have a shareholding in a licensed body, or in a parent undertaking of a licensed body⁴, which exceeds a limit specified in the rules (the 'share limit')⁵;
- 785 (2) a non-authorised person may not have an entitlement to exercise, or control the exercise of, voting rights in a licensable body, or a parent undertaking of a licensable body, which exceeds a limit specified in the rules (the 'voting limit')⁶;
- 786 (3) the total proportion of shares in a licensed body, or a parent undertaking of a licensed body, held by non-authorised persons may not exceed a limit specified in the rules⁷;
- 787 (4) the total proportion of voting rights in a licensed body, or a parent undertaking of a licensed body, which non-authorised persons are entitled to exercise or control the exercise of, may not exceed a limit specified in the rules⁸.

Rules made under any of heads (1) to (4) in relation to a licensed body and a parent undertaking may specify different limits in relation to the licensed body and the parent undertaking⁹.

The following applies in relation to a licensed body, or a parent undertaking of a licensed body, if licensing rules made by the relevant licensing authority make the provision mentioned in head (1) or (2) in relation to the body¹⁰. Any non-authorised person who acquires a shareholding in the body which exceeds the share limit or an entitlement to exercise, or control the exercise of, voting rights in the body which exceeds the voting limit, must notify the body¹¹ (and, if the body is a parent undertaking of a licensed body, the licensed body) and the licensing authority of the acquisition within such period, after the person becomes aware of it, as may be specified by order made by the Lord Chancellor on the recommendation of the Legal Services Board¹².

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing rules' see PARA 1498.

3 As to the meaning of 'non-authorised' person see PARA 1477 note 2.

4 As to the meaning of 'licensed body' see PARA 1476.

5 Legal Services Act 2007 Sch 13 para 38(1)(a). Licensing rules made under Sch 13 para 38(1)(a) or Sch 13 para (1)(b) may provide that references in those rules to a person, in relation to a person's shareholding or entitlement to exercise or control the exercise of voting rights, are to the person, any of the person's associates or the person and any of the person's associates taken together: Sch 13 para 38(3). The Lord Chancellor may, on the recommendation of the Legal Services Board, by order modify Sch 13 para 38(3): Sch 13 para 9. At the date at which this volume states the law no such order had been made. In relation to a licensed body which is a

partnership, for the purposes of the Partnership Act 1890 s 34 (see **PARTNERSHIP** vol 79 (2008) PARA 178) (dissolution by illegality) a breach of licensing rules made under Sch 13 para 38(1) does not make it unlawful for the business of the partnership to be carried on, or for the partners to carry it on in partnership: Sch 13 para 38(4). As to the Legal Services Board see s 2; and PARAS 303-326.

6 Legal Services Act 2007 Sch 13 para 38(1)(b). See note 5.

7 Legal Services Act 2007 Sch 13 para 38(1)(c). See note 5.

8 Legal Services Act 2007 Sch 13 para 38(1)(d). See note 5.

9 Legal Services Act 2007 Sch 13 para 38(2).

10 Legal Services Act 2007 Sch 13 para 39(1). As to the meaning of 'relevant licensing authority' see PARA 1501 note 5.

11 If a person under the duty to notify imposed by the Legal Services Act 2007 Sch 13 para 39(2) had no knowledge of the facts by virtue of which that duty arose, but subsequently becomes aware of those facts: Sch 13 para 40(1). The person must give the body (and, if the body is a parent undertaking of a licensed body, the licensed body) and the licensing authority the required notification within such period, after the person becomes so aware, as may be specified by order made by the Lord Chancellor on the recommendation of the Board: Sch 13 para 40(2). A person who fails to comply with the duty to notify is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 40(3), (4). At the date at which this volume states the law no such orders had been made. As to the standard scale see PARA 571 note 1.

12 Legal Services Act 2007 Sch 13 para 39(2). It is an offence for a person to fail to comply with a requirement imposed by Sch 13 para 39(2) and such a person is liable on summary conviction to a fine not exceeding level 5 on the standard scale: Sch 13 para 39(3), (4). However it is a defence for a person charged with such an offence to show that at the time of the alleged offence the person had no knowledge of the facts by virtue of which the duty to notify arose: Sch 13 para 39(5).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(v) Enforcement/1538. Divestiture condition.

(v) Enforcement

1538. Divestiture condition.

As from a day to be appointed the following provisions have effect¹. The divestiture condition is satisfied in relation to a non-authorised person and a licensed body² if the person holds a restricted interest in the licensed body in certain circumstances³ and the person holds that interest, in whole or in part, by virtue of the person's shareholding⁴ in a body corporate with a share capital (the 'relevant shares')⁵.

If the relevant licensing rules make the provision for limiting shares⁶ or limiting votes⁷ the divestiture condition is also satisfied in relation to a non-authorised person and a licensed body if:

- 788 (1) the person's shareholding⁸ in the body, or a parent undertaking of the body, exceeds the share limit, and the body or parent undertaking (as the case may be) is a body corporate with a share capital⁹; or
- 789 (2) the person's entitlement to exercise or control the exercise of voting rights in the body, or a parent undertaking of the body, exceeds the voting limit by virtue of the person holding shares in a body corporate with a share capital¹⁰.

If the divestiture condition is satisfied in relation to a non-authorised person and a licensed body, the licensing authority may give the person a restriction notice¹¹ and apply to the High Court for an order¹².

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'non-authorised person' see PARA 1477 note 2. As to the meaning of 'licensed body' see PARA 1476.

3 Those circumstances are that the person holds the restricted interest as a result of the person taking a step in circumstances in which that constitutes an offence under the Legal Services Act 2007 Sch 13 para 24(1) (see PARA 1530) (whether or not the person is charged with or convicted of an offence), in breach of conditions imposed under Sch 13 para 17 (see PARA 1528), Sch 13 para 28 (see PARA 1533), or Sch 13 para 33 (see PARA 1535), or in contravention of an objection by the licensing authority under Sch 13 para 31 (see PARA 1534) or Sch 13 para 36 (see PARA 1536): Sch 13 para 41(2).

4 The references to a person's shareholding in the Legal Services Act 2007 Sch 13 para 41(1)(b) are to be read in accordance with Sch 13 para 3(3) (see PARA 1522) or Sch 13 para 4(2) (see PARA 1522) (as the case may be): Sch 13 para 41(3). The Lord Chancellor may, on the recommendation of the Board, by order modify Sch 13 para 41(3): Sch 13 para 9.

5 Legal Services Act 2007 Sch 13 para 41(1). If the divestiture condition is satisfied by virtue of Sch 13 para 14 the High Court may, on the application of the licensing authority, order the sale of the appropriate number of the relevant shares: Sch 13 para 45(1).

6 Ie the provision mentioned in the Legal Services Act 2007 Sch 13 para 38(1)(a) (see PARA 1537).

7 Ie the provision mentioned in the Legal Services Act 2007 Sch 13 para 38(1)(b) (see PARA 1537).

8 References in the Legal Services Act 2007 Sch 13 para 42 to a person's shareholding (or holding of shares) or entitlement are to be read in accordance with any applicable licensing rules made under Sch 13 para 38(3) (see PARA 1537): Sch 13 para 42(3).

9 Legal Services Act 2007 Sch 13 para 42(1)(a). In Sch 13 paras 41-51 'excess shares' means:

2267 (1) in a case within Sch 13 para 42(1)(a), the number of shares by which the person's shareholding exceeds the share limit (Sch 13 para 42(2)(a)); and

2268 (2) in a case within Sch 13 para 42(1)(b), the number of shares held by the person in excess of the number of shares the person could hold without the person's entitlement to exercise, or control the exercise of, voting rights exceeding the voting limit (Sch 13 para 42(2)(b)).

10 Legal Services Act 2007 Sch 13 para 42(1)(b).

11 Is a notice under the Legal Services Act 2007 Sch 13 para 44 (see PARA 1539). As to notices generally see PARA 303 note 11.

12 Legal Services Act 2007 Sch 13 para 43(1). The order mentioned in the text is an order under Sch 13 para 45. The licensing authority may not make an application to the High Court for an order under Sch 13 para 45 unless it has notified the person that it intends to do so if the divestiture condition is satisfied in relation to the person and the body at the end of the relevant period and the relevant period has expired: Sch 13 para 43(2). The relevant period is such period (not less than the prescribed period) as may be specified in the notice: Sch 13 para 43(3).

UPDATE

1538 Divestiture condition

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 para 43(3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(v) Enforcement/1539. Restriction notice.

1539. Restriction notice.

As from a day to be appointed the following provisions have effect¹. A restriction notice is a notice directing that such of the relevant shares or excess shares² (as the case may be) as are specified in the notice are, until further notice, subject to one or more of the following restrictions³. The restrictions are:

- 790 (1) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares a transfer of (or agreement to transfer) the right to be issued with them, is void⁴;
- 791 (2) no voting rights are to be exercisable in respect of the shares⁵;
- 792 (3) no further shares are to be issued in right of them or in pursuance of any offer made to their holder⁶;
- 793 (4) except in a liquidation, no payment is to be made of any sums due from the company on the shares, whether in respect of capital or otherwise⁷.

A copy of the restriction notice must be given to the body to whose shares it relates⁸.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'excess shares' see PARA 1538 note 9. As to notices generally see PARA 303 note 11.

3 Legal Services Act 2007 Sch 13 para 44(1). A restriction notice ceases to have effect:

2269 (1) in accordance with an order of the High Court under Sch 13 para 45(4) (Sch 13 para 44(4)(a));

2270 (2) if no application has been made to the High Court for an order under Sch 13 para 45 (see PARA 1540) before the end of such period as may be prescribed, at the end of that period (Sch 13 para 44(4)(b));

2271 (3) if the licensed body ceases to be licensed by the licensing authority (Sch 13 para 44(4)(c)).

4 Legal Services Act 2007 Sch 13 para 44(2)(a).

5 Legal Services Act 2007 Sch 13 para 44(2)(b).

6 Legal Services Act 2007 Sch 13 para 44(2)(c).

7 Legal Services Act 2007 Sch 13 para 44(2)(d).

8 Legal Services Act 2007 Sch 13 para 44(3).

UPDATE

1539 Restriction notice

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 para 44(4)(b) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(v) Enforcement/1540. Divestiture by High Court.

1540. Divestiture by High Court.

As from a day to be appointed the following provisions have effect¹. If the divestiture condition is satisfied² the High Court may, on the application of the licensing authority³, order the sale of the appropriate number of the relevant shares or sale of the excess shares⁴, as appropriate⁵. If shares are for the time being subject to any restriction⁶, the court may order that they are to cease to be subject to that restriction⁷.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 If satisfied by virtue of the Legal Services Act 2007 Sch 13 para 41 or Sch 13 para 42 (see PARA 1538). If the divestiture condition is satisfied by virtue of Sch 13 para 41(2)(b) or Sch 13 para 41(2)(c), no order may be made under Sch 13 para 45(1) or Sch 13 para 45(4) until the end of the period within which an appeal may be made against the imposition of the conditions or the objection or if an appeal is made, until the appeal has been determined or withdrawn: Sch 13 para 45(5).

3 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

4 The appropriate number of the relevant shares is the number of those shares, the sale of which will result in the non-authorised person no longer holding a restricted interest in the licensed body or if the non-authorised person holds more than one kind of restricted interest, a restricted interest the person's holding of which is within Legal Services Act 2007 Sch 13 para 41(2) (see PARA 1538): Sch 13 para 45(2).

5 Legal Services Act 2007 Sch 13 para 45(1), (3). If an order has been made under Sch 13 para 45(1) or Sch 13 para 45(3) the court may, on the application of the licensing authority, make such further order relating to the sale or transfer of the shares as it thinks fit: Sch 13 para 45(5). If shares are sold in pursuance of an order under Sch 13 para 45(7), the proceeds of sale, less the costs of sale, must be paid into court for the benefit of the persons beneficially interested in them: Sch 13 para 45(7). Any such person may apply to the court for the whole or part of the proceeds to be paid to the person: Sch 13 para 45(8).

6 If a restriction under the Legal Services Act 2007 Sch 13 para 44 (see PARA 1539).

7 Legal Services Act 2007 Sch 13 para 45(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(v) Enforcement/1541. Conditions.

1541. Conditions.

As from a day to be appointed the following provisions have effect¹. If a person holds a restricted interest in a licensed body² in breach of certain conditions³ the High Court may, on the application of the licensing authority⁴, make such order as the court thinks fit to secure compliance with the conditions to which the person's holding of the restricted interest is subject⁵. The licensing authority may not make an application unless it has notified the person that it intends to do so if the conditions are not complied with before the end of the relevant period⁶ and the relevant period has expired⁷.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'restricted interest' see PARA 1522 note 3. As to the meaning of 'licensed body' see PARA 1476.

3 The conditions imposed by the Legal Services Act 2007 Sch 13 para 17 (see PARA 1528), Sch 13 para 28 (see PARA 1533) or Sch 13 para 33 (see PARA 1535).

4 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

5 Legal Services Act 2007 Sch 13 para 46(1), (4). No order may be made under Sch 13 para 46 until the end of the period within which an appeal may be made against the imposition of the conditions or, if an appeal is made, until the appeal has been determined or withdrawn: Sch 13 para 46(5). As to an appeal against the conditions see PARA 1528 note 7.

6 The relevant period is such period (not less than the prescribed period) as may be specified in the notice: Legal Services Act 2007 Sch 13 para 46(3). As to notices generally see PARA 303 note 11. For the prescribed period see PARA 1528 note 7.

7 Legal Services Act 2007 Sch 13 para 46(2).

UPDATE

1541 Conditions

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 para 46(3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(v) Enforcement/1542. Records of decisions.

1542. Records of decisions.

As from a day to be appointed the following provisions have effect¹. The relevant licensing authority must notify the Legal Services Board² where it has objected under particular provisions³ to a person's holding of a restricted interest⁴ or it has imposed conditions under certain provisions⁵ on a person's holding of a restricted interest⁶. The notification must state the reasons for the objection or imposition of conditions and the kind of restricted interest to which the objection or conditions related⁷. If there is an appeal to the relevant appellate body against the objection or imposition of conditions, the licensing authority must notify the Board of the outcome of that appeal (and any subsequent appeal to the High Court)⁸.

A licensing authority must notify the Board where under particular provisions⁹ it approves the holding of a restricted interest in a licensed body by a person included in the list kept by the Board¹⁰. The notification must state where appropriate¹¹ the conditions to which the approval was subject and the reasons for the licensing authority's decision to approve the person's holding of the interest¹².

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

3 Ie where it has objected under the Legal Services Act 2007 Sch 13 para 19 (see PARA 1529), Sch 13 para 31 (see PARA 1534) or Sch 13 para 36 (see PARA 1536).

4 As to the meaning of 'restricted interest' see PARA 1522 note 3.

5 Ie where it has imposed conditions under Sch 13 para 17 (see PARA 1528), Sch 13 para 28 (see PARA 1533) or Sch 13 para 33 (see PARA 1535).

6 Legal Services Act 2007 Sch 13 para 47(1). If the licensing authority takes any action under Sch 13 para 43 (see PARA 1538) in relation to a person notified to the Board under Sch 13 para 47(1) it must notify the Board of that fact: Sch 13 para 47(3). If the licensing authority has imposed conditions on a person's holding of a restricted interest, it must notify the Board of any decision taken by it under Sch 13 para 35 (see PARAS 1528, 1533, 1535) (variation and cancellation of conditions): Sch 13 para 47(5). The Board must keep a list of the persons in respect of which it receives a notification under Sch 13 para 47(1): Sch 13 para 51(1). The list must record in relation to a person notified to the Board under Sch 13 para 47(1), the information included in the notification by virtue of Sch 13 para 47(2) and any notification under Sch 13 para 47(3) and in relation to any person included in the list, the information included in any notification relating to that person under Sch 13 para 48: Sch 13 para 51(2). The Board must make the list kept by it under Sch 13 para 51 available to every licensing authority: Sch 13 para 51(4). If the Board receives a notification under Sch 13 para 47(4) or (5), Sch 13 para 48(3) or (4) or Sch 13 para 50(5) it must make such alterations to the list as it considers appropriate having regard to the decision of the licensing authority or the outcome of the appeal (which may include removing a person from the list): Sch 13 para 51(3).

7 Legal Services Act 2007 Sch 13 para 47(2). The licensing authority must give the person and the licensed body concerned a copy of any notification it gives the Board under this Sch 13 para 47: Sch 13 para 47(6).

8 Legal Services Act 2007 Sch 13 para 47(4).

9 Ie under the Legal Services Act 2007 Sch 13 para 16 (see PARA 1527), Sch 13 para 17 (see PARA 1528), Sch 13 para 27 (see PARA 1532) or Sch 13 para 28 (see PARA 1533).

10 Legal Services Act 2007 Sch 13 para 48(1). If the approval was under Sch 13 para 17 or Sch 13 para 28 and there is an appeal to the relevant appellate body against the imposition of conditions, the licensing authority must notify the Board of the outcome of that appeal (and any subsequent appeal to the High Court): Sch 13 para 48(3). If the approval was under Sch 13 para 17 or Sch 13 para 28, the licensing authority must notify the Board of any decision taken by it under Sch 13 para 35 (variation and cancellation of conditions): Sch 13 para 48(4).

11 Ie if the approval was under the Legal Services Act 2007 Sch 13 para 17 or Sch 13 para 28.

12 Legal Services Act 2007 Sch 13 para 48(2). The licensing authority must give the person and the licensed body concerned a copy of any notification it gives the Board under Sch 13 para 48: Sch 13 para 48(5).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(v) Enforcement/1543. Notifying Board where share limit or voting limit breached.

1543. Notifying Board where share limit or voting limit breached.

As from a day to be appointed the following provisions have effect¹. If the relevant licensing rules² make provision in relation to limiting shares or voting³ the licensing authority may, if it considers it appropriate to do so in all the circumstances of the case, notify the Legal Services Board⁴ where a non-authorised person acquires:

- 794 (1) a shareholding in a licensed body or parent undertaking of a licensed body which exceeds the share limit⁵; or
- 795 (2) an entitlement to exercise, or control the exercise of, voting rights in a licensed body or parent undertaking of a licensed body which exceeds the voting limit⁶.

If the licensing authority proposes to make such a notification it must give the person and the licensed body a warning notice⁷.

1 The Legal Services Act 2007 Sch 13 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing rules' see PARA 1498.

3 See under the Legal Services Act 2007 Sch 13 para 38(1)(a) or (b) (see PARA 1537).

4 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326.

5 Legal Services Act 2007 Sch 13 para 49(1), (2)(a). As to the meaning of 'share limit' see PARA 1537. The Board must keep a list of the persons in respect of which it receives a notification under Sch 13 para 49(2): Sch 13 para 51(1). The list must record in relation to a person notified to the Board under Sch 13 para 47(1), the information included in the notification by virtue of Sch 13 para 47(2) and any notification under Sch 13 para 47(3) and in relation to any person included in the list, the information included in any notification relating to that person under Sch 13 para 48: Sch 13 para 51(2). The Board must make the list kept by it under Sch 13 para 51 available to every licensing authority: Sch 13 para 51(4). If the Board receives a notification under Sch 13 para 47(4) or (5), Sch 13 para 48(3) or (4) or Sch 13 para 50(5) it must make such alterations to the list as it considers appropriate having regard to the decision of the licensing authority or the outcome of the appeal (which may include removing a person from the list): Sch 13 para 51(3).

6 Legal Services Act 2007 Sch 13 para 49(1), (2)(b). As to the meaning of 'voting limit' see PARA 1537.

7 Legal Services Act 2007 Sch 13 para 49(3). The warning notice must specify the reasons for the proposed notification and state that representations may be made to the licensing authority within the prescribed period: Sch 13 para 49(4). The licensing authority must consider any representations made within the prescribed period: Sch 13 para 49(5). If the licensing authority notifies the Board under Sch 13 para 49(2), it must give the person concerned and the licensed body a copy of the notification and a notice stating the reasons for the notification: Sch 13 para 49(6). If the share limit or voting limit is breached in relation to a parent undertaking of a licensed body, references in Sch 13 para 49(3) and Sch 13 para 49(6) to the licensed body include the parent undertaking: Sch 13 para 49(7). The person concerned and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the notification: Sch 13 para 50(1). The relevant appellate body may dismiss the appeal or allow the appeal and order the person's name to be removed from the list kept by the Board under Sch 13 para 51: Sch 13 para 50(2). A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court: Sch 13 para 50(3). The High Court may make such order as it thinks fit: Sch 13 para 50(4). The licensing authority must notify the Board of the

outcome of any appeal under Sch 13 para 50, and give the person concerned and the licensed body a copy of the notification: Sch 13 para 50(5). If the share limit or voting limit is breached in relation to a parent undertaking of a licensed body, references in Sch 13 para 50(1) and Sch 13 para 50(5) to the licensed body include the parent undertaking: Sch 13 para 50(6). As to notices generally see PARA 303 note 11.

UPDATE

1543 Notifying Board where share limit or voting limit breached

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 Sch 13 paras 49(4)(b) (in part), (5) (in part), 50(1) (in part), (3) (in part) is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(vi) Regulation of Licensed Bodies/1544. Duties of non-authorised persons.

(vi) Regulation of Licensed Bodies

1544. Duties of non-authorised persons.

As from a day to be appointed the following provisions have effect¹. A non-authorised person² who is an employee or manager of a licensed body³, or has an interest or an indirect interest, or holds a material interest, in a licensed body, must not do anything which causes or substantially contributes to a breach by the licensed body or an employee or manager of the licensed body who is an authorised person in relation to an activity which is a reserved legal activity⁴, of the duties imposed⁵ on them⁶.

1 The Legal Services Act 2007 s 90 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'non-authorised person' see PARA 1477 note 2.

3 As to the meaning of 'licensed body' see PARA 1476. As to the meaning of 'manager' see PARA 369 note 17.

4 As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515.

5 ie the duties imposed on them under the Legal Services Act 2007 s 176 (see PARA 384).

6 Legal Services Act 2007 s 90. As to the duty of the Head of Legal Practice to ensure compliance see PARA 1545.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(vi) Regulation of Licensed Bodies/1545. Duties of the Head of Legal Practice.

1545. Duties of the Head of Legal Practice.

As from a day to be appointed the following provisions have effect¹. The Head of Legal Practice² of a licensed body³ must take all reasonable steps to ensure compliance with the terms of the licensed body's licence and as soon as reasonably practicable, report to the licensing authority⁴ any failure to comply with the terms of the licence⁵.

The Head of Legal Practice of a licensed body must take all reasonable steps to ensure that the licensed body, and any of its employees or managers who are authorised persons in relation to an activity which is a reserved legal activity⁶, comply with the duties imposed⁷ and, as soon as reasonably practicable, report to the licensing authority such failures by those persons to comply with those duties as may be specified in licensing rules⁸.

The Head of Legal Practice of a licensed body must take all reasonable steps to ensure that non-authorised persons subject to the duty imposed in relation to the licensed body⁹ comply with that duty and as soon as reasonably practicable, report to the licensing authority any failure by a non-authorised person to comply with that duty¹⁰.

1 The Legal Services Act 2007 s 91 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 A licensed body must at all times have a Head of Legal Practice: see the Legal Services Act 2007 Sch 11 para 11(2)(a); and PARA 1509.

3 As to the meaning of 'licensed body' see PARA 1476.

4 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

5 Legal Services Act 2007 s 91(1). This does not apply to the terms of the licence so far as they require compliance with licensing rules made under Sch 11 para 20 (see PARA 1511) (as to which see s 92; and PARA 1546); s 91(2).

6 As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see the Legal Services Act 2007 s 18; and PARA 515. As to the meaning of 'manager' see PARA 369 note 17.

7 Ie the duties imposed by the Legal Services Act 2007 s 176 (see PARA 384).

8 Legal Services Act 2007 s 91(3). As to licensing rules generally see PARA 1498.

9 Ie the duty imposed by the Legal Services Act 1477 note 2.

10 Legal Services Act 2007 s 91(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(vi) Regulation of Licensed Bodies/1546. Duties of the Head of Finance and Administration.

1546. Duties of the Head of Finance and Administration.

As from a day to be appointed the following provisions have effect¹. The Head of Finance and Administration² must take all reasonable steps to ensure compliance with licensing rules relating to accounts³ and must report any breach of those rules to the licensing authority⁴ as soon as reasonably practicable⁵.

1 The Legal Services Act 2007 s 92 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 A licensed body must at all times have a Head of Finance and Administration: see the Legal Services Act 2007 Sch 11 para 13; and PARA 1510. As to the meaning of 'licensed body' see PARA 1476.

3 Legal Services Act 2007 s 92(1). The licensing rules relating to accounts mentioned in the text are licensing rules made under Sch 11 para 20 (see PARA 1511). As to licensing rules see PARA 1498 et seq.

4 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

5 Legal Services Act 2007 s 92(2).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(vi) Regulation of Licensed Bodies/1547. Financial penalties.

1547. Financial penalties.

As from a day to be appointed the following provisions have effect¹. A licensing authority may, in accordance with its licensing rules², impose on a licensed body³, or a manager or employee of a licensed body⁴, a penalty of such amount as it considers appropriate⁵. Such a penalty is payable to the licensing authority⁶.

A person on whom such a penalty is imposed may, before the end of such period as may be prescribed by rules made by the Board, appeal to the relevant appellate body on one or more of the appeal grounds⁷. The appeal grounds are:

- 796 (1) that the imposition of the penalty is unreasonable in all the circumstances of the case⁸;
- 797 (2) that the amount of the penalty is unreasonable⁹;
- 798 (3) that it is unreasonable of the licensing authority to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid¹⁰.

On any such appeal, where the relevant appellate body considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the appeal grounds, that body may quash the penalty, substitute a penalty of such lesser amount as it considers appropriate¹¹ or, in the case of the appeal ground in head (3) above, substitute for any time imposed by the licensing authority a different time or times¹².

A party to the appeal may appeal to the High Court on a point of law arising from the decision of the relevant appellate body, but only with the permission of the High Court¹³ and the High Court may make such order as it thinks fit¹⁴.

1 The Legal Services Act 2007 ss 95-97 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. Licensing rules must make provision in relation to the imposing of financial penalties: see the Legal Services Act 2007 Sch 11 para 22; and PARA 1512. As to the meaning of 'licensing rules' see PARA 1498.

3 For the purposes of the Legal Services Act 2007 s 95 references to a licensed body are to a body which was a licensed body at the time the act or omission in respect of which the penalty is imposed occurred (whether or not the body subsequently ceased to be a licensed body): s 95(6). As to the meaning of 'licensed body' see PARA 1476.

4 For the purposes of the Legal Services Act 2007 s 95 references to a manager or employee of a licensed body are to a person who was a manager or employee of a licensed body at that time (whether or not the person subsequently ceased to be a manager or employee): s 95(6). As to the meaning of 'manager' see PARA 369 note 17.

5 Legal Services Act 2007 s 95(1). The Legal Services Board must make rules prescribing the maximum amount of a penalty which may be imposed under s 95 and the penalty imposed under s 95(1) must not exceed this amount: see s 95(2), (3). Any rules made by the Board under s 95(3) must be made by statutory instrument and the Statutory Instrument Act 1946 applies to the Board's powers to make those rules as if the Board were a Minister of the Crown: s 204(2). The rules may only be made with the consent of the Lord Chancellor: s 95(4).

Such rules are non-statutory and are not set out in this work. In ss 96 and 97 references to a 'penalty' are to a penalty under s 95: s 95(7). As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. If the whole or any part of a penalty is not paid by the time by which, in accordance with licensing rules, it is required to be paid, the unpaid balance from time to time carries interest at the rate for the time being specified in the Judgments Act 1838 s 17 (see PARA 988): Legal Services Act 2007 s 97(1). Where a penalty, or any portion of it, has not been paid by the time by which, in accordance with licensing rules, it is required to be paid and no appeal relating to the penalty has been made under s 96 during the period within which such an appeal can be made or an appeal has been made and determined or withdrawn, the licensing authority may recover from the person on whom the penalty was imposed, as a debt due to the licensing authority, any of the penalty and any interest which has not been paid: s 97(2). A licensing authority must pay into the Consolidated Fund any sum received by it as a penalty (or as interest on a penalty): s 97(3). Any sum received by the Legal Services Board under ss 95-97 in its capacity as a licensing authority is payable into the Consolidated Fund: see s 175(1)(e). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

6 Legal Services Act 2007 s 95(5).

7 Legal Services Act 2007 s 96(1). Except as provided by s 96 the validity of a penalty is not to be questioned by any legal proceedings whatever: s 96(8).

8 Legal Services Act 2007 s 96(2)(a).

9 Legal Services Act 2007 s 96(2)(b).

10 Legal Services Act 2007 s 96(2)(c).

11 Where the relevant appellate body substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such time, as it considers just and equitable: Legal Services Act 2007 s 96(4).

12 Legal Services Act 2007 s 96(3). Where the relevant appellate body specifies as a time by which the penalty, or a portion of the penalty, is to be paid a time before the determination of the appeal under s 96 it may require the payment of interest on the penalty, or portion, from that time at such rate as it considers just and equitable: s 96(5).

13 Legal Services Act 2007 s 96(6).

14 Legal Services Act 2007 s 96(7).

UPDATE

1547 Financial penalties

TEXT AND NOTE 1--Day appointed in relation to Legal Services Act 2007 ss 95(3), (4), 96(1), 204 is 1 January 2009: SI 2008/3149.

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(vi) Regulation of Licensed Bodies/1548. Disqualification.

1548. Disqualification.

As from a day to be appointed the following provisions have effect¹. A licensing authority² may in accordance with its licensing rules³ disqualify a person from one or more of the activities mentioned below if the disqualification condition is satisfied in relation to the person and the licensing authority is satisfied that it is undesirable for the person to engage in that activity or those activities⁴. The activities are:

- 799 (1) acting as Head of Legal Practice of any licensed body⁵;
- 800 (2) acting as Head of Finance and Administration of any licensed body⁶;
- 801 (3) being a manager of any licensed body⁷; or
- 802 (4) being employed by any licensed body⁸.

The disqualification condition is satisfied in relation to a person if, in relation to a licensed body licensed by the licensing authority, the person (intentionally or through neglect) breaches a relevant duty⁹ to which the person is subject or causes, or substantially contributes to, a significant breach of the terms of the licensed body's licence¹⁰.

The Legal Services Board must keep¹¹ lists of persons who are disqualified from: (a) acting as Head of Legal Practice of any licensed body¹²; (b) acting as Head of Finance and Administration of any licensed body¹³; (c) being a manager of any licensed body¹⁴; or (d) being employed by any licensed body¹⁵.

1 The Legal Services Act 2007 ss 99, 100 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the meaning of 'licensing rules' see PARA 1498.

4 Legal Services Act 2007 s 99(1).

5 Legal Services Act 2007 s 99(2)(a). As to the Head of Legal Practice see PARAS 1509, 1545. As to the meaning of 'licensed body' see PARA 1476.

6 Legal Services Act 2007 s 99(2)(b). As to the Head of Finance and Administration see PARAS 1510, 1546.

7 Legal Services Act 2007 s 99(2)(c). As to the meaning of 'manager' see PARA 369 note 17.

8 Legal Services Act 2007 s 99(2)(d).

9 The relevant duties are:

2272 (1) the duties imposed on a Head of Legal Practice by s 91 (see PARA 1545) (Legal Services Act 2007 s 99(4)(a));

2273 (2) the duties imposed on a Head of Finance and Administration by s 92 (see PARA 1546) (s 99(4)(b));

2274 (3) the duties imposed by s 176 (see PARA 384) on regulated persons (s 99(4)(c)); and

2275 (4) the duty imposed on non-authorised persons by s 90 (see PARA 1544) (s 99(4)(d)).

As to the meaning of 'non-authorised person' see PARA 1477 note 2.

10 Legal Services Act 2007 s 99(3).

11 As to the Legal Services Board see the Legal Services Act 2007 s 2; and PARAS 303-326. The Board must publish the lists kept by it under the Legal Services Act 2007 s 100(1): s 100(6).

12 Legal Services Act 2007 s 100(1)(a). A person is disqualified from acting in a way mentioned in s 100(1) if the person has been disqualified from so acting by a licensing authority under s 99 and the disqualification continues in force: s 100(2). The disqualification ceases to be in force if the appropriate licensing authority so determines, on a review or otherwise, in accordance with licensing rules made under Sch 11 para 23 (see PARA 1513): s 100(3). The appropriate licensing authority is the licensing authority which disqualified the person or if the person was disqualified by an approved regulator which is no longer designated as a licensing authority, the successor licensing authority: s 100(4). The successor licensing authority is the licensing authority which licenses the body in relation to which the disqualification condition (within the meaning of s 99) was satisfied in respect of the person or if there is no such licensing authority, the licensing authority designated by the Board on an application by the disqualified person: s 100(5).

13 Legal Services Act 2007 s 100(1)(b).

14 Legal Services Act 2007 s 100(1)(c).

15 Legal Services Act 2007 s 100(1)(d).

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1549. Information.

As from a day to be appointed the following provisions have effect¹. The relevant licensing authority in relation to a licensed body² may by notice require³:

- 803 (1) the licensed body⁴;
- 804 (2) any manager or employee (or former manager or employee) of the licensed body⁵;
- 805 (3) any non-authorised person who has an interest or an indirect interest, or holds a material interest, in the licensed body⁶,

to provide information, or information of a description, specified in the notice or produce documents, or documents of a description, specified in the notice, for the purpose of enabling the licensing authority to ascertain whether the terms of the licensed body's licence are being, or have been, complied with⁷.

Where a person is unable to comply with a notice given to the person under the above provisions, the person must give the licensing authority a notice to that effect stating the reasons why the person cannot comply⁸.

If a person refuses or otherwise fails to comply with the notice the licensing authority may apply to the High Court for an order requiring the person to comply with the notice or with such directions for the like purpose as may be contained in the order⁹.

1 The Legal Services Act 2007 ss 93, 94 are to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. For the purposes of the Legal Services Act 2007 ss 93, 94, references to a licensed body include a body which was, but is no longer, a licensed body: s 93(7). As to the meaning of 'licensed body' see PARA 1476.

3 A notice under the Legal Services Act 2007 s 93(1) may specify the manner and form in which any information is to be provided and require the information to be provided, or the document to be produced, to the licensing authority or to a person specified in the notice: s 93(3)(a), (c). However the notice must specify the period within which the information is to be provided or the document produced: s 93(3)(b).

The licensing authority may, by notice, require a person within s 93(2) (or a representative of such a person) to attend at a time and place specified in the notice to provide an explanation of any information provided or document produced under s 93: s 93(4). The licensing authority may pay to any person such reasonable costs as may be incurred by that person in connection with the provision of any information, or production of any document, by that person pursuant to a notice under s 93(1) or that person's compliance with a requirement imposed under s 93(4): s 93(5).

The licensing authority, or a person specified under s 93(3)(c) in a notice, may take copies of or extracts from a document produced pursuant to a notice under s 93(1): s 93(6). As to notices generally see PARA 303 note 11.

4 Legal Services Act 2007 s 93(1), (2)(a).

5 Legal Services Act 2007 s 93(1), (2)(b). As to the meaning of 'manager' see PARA 369 note 17.

6 Legal Services Act 2007 s 93(1), (2)(c).

- 7 Legal Services Act 2007 s 93(1).
- 8 Legal Services Act 2007 s 94(1).
- 9 Legal Services Act 2007 s 94(2).

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1550. Referral to appropriate regulator.

As from a day to be appointed the following provisions have effect¹. The relevant licensing authority may refer to an appropriate regulator² any matter relating to the conduct of:

- 806 (1) an employee or manager of a licensed body³;
- 807 (2) a person designated as a licensed body's Head of Legal Practice or Head of Finance and Administration⁴.

The licensing authority may also refer any matter relating to the conduct of such a person to the Legal Services Board⁵.

1 The Legal Services Act 2007 s 98 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. Appropriate regulators are, if the person is an authorised person in relation to a reserved legal activity, any relevant approved regulator in relation to that person and, if the person carries on non-reserved activities, any person who exercises regulatory functions in relation to the carrying on of such activities by the person: Legal Services Act 2007 s 98(3). As to the meaning of 'appropriate regulator' see PARA 358. As to the meaning of 'reserved legal activity' see PARA 512. As to the meaning of 'regulatory functions' see PARA 301 note 4. As to the meaning of 'authorised person', in relation to activities which are reserved legal activities, see s 18; and PARA 515.

3 Legal Services Act 2007 s 98(1)(a). As to the meaning of 'manager' see PARA 369 note 17.

4 Legal Services Act 2007 s 98(1)(b). As to the Head of Legal Practice see PARAS 1409, 1545. As to the Head of Finance and Administration see PARAS 1510, 1546.

5 Legal Services Act 2007 s 98(2). As to the Legal Services Board see s 2; and PARAS 303-326.

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1551. Suspension and revocation of licence.

As from a day to be appointed the following provisions have effect¹. A licensing authority² may, in accordance with its licensing rules³, suspend or revoke any licence granted by it under the Legal Services Act 2007 Part 5⁴. A licence is to be treated as not being in force at any time while it is so suspended⁵.

1 The Legal Services Act 2007 s 101 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq.

3 As to the meaning of 'licensing rules' see PARA 1498.

4 Legal Services Act 2007 s 101(1).

5 Legal Services Act 2007 s 101(2).

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1552. Prohibition on payment.

As from a day to be appointed the following provisions have effect¹. The licensing authority² may apply to the High Court for an order that a person holding money on behalf of the licensed body may not make any payment of the money, except with the leave of the court³ and the High Court may make the order if it thinks fit⁴.

¹ The Legal Services Act 2007 Sch 14 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

² As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. The licensing authority's powers of intervention under the Legal Services Act 2007 Sch 14 apply where:

2276 (1) in relation to a licensed body and the relevant licensing authority, one or more of the intervention conditions is satisfied (Sch 14 para 1(1)(a));

2277 (2) a licence granted to a body has expired and has not been renewed or replaced by the relevant licensing authority (Sch 14 para 1(1)(b)).

The intervention conditions are:

2278 (a) that the licensing authority is satisfied that one or more of the terms of the licensed body's licence have not been complied with (Sch 14 para 1(2)(a));

2279 (b) that a person has been appointed receiver or manager of property of the licensed body (Sch 14 para 1(2)(b));

2280 (c) that a relevant insolvency event has occurred in relation to the licensed body (Sch 14 para 1(2)(c));

2281 (d) that the licensing authority has reason to suspect dishonesty on the part of any manager or employee of the licensed body in connection with that body's business, any trust of which that body is or was a trustee, any trust of which the manager or employee of the body is or was a trustee in that person's capacity as such a manager or employee or the business of another body in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee (Sch 14 para 1(2)(d));

2282 (e) that the licensing authority is satisfied that there has been undue delay on the part of the licensed body in connection with any matter in which it is or was acting for a client or with any trust of which it is or was a trustee or on the part of a person who is or was a manager or employee of the licensed body in connection with any trust of which that person is or was a trustee in that person's capacity as such a manager or employee, and the notice conditions are satisfied (Sch 14 para 1(2)(e));

2283 (f) that the licensing authority is satisfied that it is necessary to exercise the powers conferred by Sch 14 (or any of them) in relation to a licensed body to protect the interests of clients (or former or potential clients) of the licensed body, the interests of the beneficiaries of any trust of which the licensed body is or was a trustee or the interests of the beneficiaries of any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee (Sch 14 para 1(2)(f)).

As to the meaning of 'relevant licensing authority' see PARA 1501 note 5. As to the meaning of 'manager' see PARA 369 note 17. As to notices generally see PARA 303 note 11. For the purposes of Sch 14 para 1(2) a relevant insolvency event occurs in relation to a licensed body if:

- 2284 (i) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under the Insolvency Act 1986 s 89 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 941) (Legal Services Act 2007 Sch 14 para 1(3)(a));
- 2285 (ii) the body enters administration within the meaning of the Insolvency Act 1986 Sch B1 para 1(2)(b) (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 212) (Legal Services Act 2007 Sch 14 para 1(3)(b));
- 2286 (iii) an administrative receiver within the meaning of the Insolvency Act 1986 s 251 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(3) (2004 Reissue) PARA 8) is appointed (Legal Services Act 2007 Sch 14 para 1(3)(c));
- 2287 (iv) a meeting of creditors is held in relation to the body under the Insolvency Act 1986 s 95 (see **COMPANY AND PARTNERSHIP INSOLVENCY** vol 7(4) (2004 Reissue) PARA 942) (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up) (Legal Services Act 2007 Sch 14 para 1(3)(d));
- 2288 (v) an order for the winding up of the body is made (Sch 14 para 1(3)(e)).

The notice conditions referred to in Sch 14 para 1(2)(e) are:

- 2289 (A) that the licensing authority has given the licensed body a notice inviting it to give an explanation within such period (of not less than eight days) following the giving of the notice as may be specified in it (Sch 14 para 1(4)(a));
- 2290 (B) that the licensed body has failed within that period to give an explanation which the licensing authority regards as satisfactory (Sch 14 para 1(4)(b)); and
- 2291 (C) that the licensing authority gives notice of the failure to the licensed body and (at the same time or later) notice that Sch 14 applies in its case by virtue of Sch 14 para 1(2)(e) (Sch 14 para 1(4)(c)).

Where Sch 14 applies in relation to a licensed body by virtue of Sch 14 para 1(1)(a) (see head (1) above) it continues to apply after the body's licence has been revoked or has otherwise ceased to have effect: Sch 14 para 1(5).

For the purposes of Sch 14 'licensed body' includes:

- 2292 (aa) a body whose licence is suspended (Sch 14 para 1(6)(a));
- 2293 (bb) a body to whom Sch 14 continues to apply by virtue of Sch 14 para 1(5) (Sch 14 para 1(6)(b));
- 2294 (cc) except in Sch 14 para 1, a body whose licence has ceased to have effect as mentioned in Sch 14 para 1(1)(b) (Sch 14 para 1(6)(c)).

The powers conferred by Sch 14 in relation to sums of money, documents or other property may be exercised despite any lien on them or right to their possession: Sch 14 para 15. The licensing authority may do all things which are reasonably necessary to facilitate the exercise of its powers under Sch 14: Sch 14 para 16. Any costs incurred by the licensing authority for the purposes of Sch 14 (including the costs of any person exercising powers under Sch 14 on behalf of the licensing authority) are to be paid by the licensed body and may be recovered from the licensed body as a debt owing to the licensing authority: Sch 14 para 17(1). This is subject to any order for payment of costs that may be made on an application to the court under Sch 14: Sch 14 para 17(2). The High Court, on the application of the licensing authority, may order a liable party to pay a specified proportion of the costs mentioned in Sch 14 para 17: Sch 14 para 18(1). For this purpose 'liable party' means, if the licensed body is a partnership, any former partner in the licensed body, and in any other case, any manager or former manager of the licensed body: Sch 14 para 18(2). The High Court may make an order under Sch 14 para 18 in respect of a liable party only if it is satisfied that the conduct (or any part of the conduct) by reason of which Sch 14 applies was conduct carried on with the consent or connivance of, or was attributable to any neglect on the part of, the liable party: Sch 14 para 18(3). In Sch 14 para 18 'specified' means specified in the order made by the High Court: Sch 14 para 18(4). Any sums received under Sch 14 paras 17, 18 are payable into the Consolidated Fund: see s 175(1)(e). As to the Consolidated Fund see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 711 et seq; **PARLIAMENT** vol 78 (2010) PARAS 1028-1031.

3 Legal Services Act 2007 Sch 14 para 2(1), (2). An order under Sch 14 para 2(2) may take effect in relation to a person:

2295 (1) whether or not the person is named in the order (Sch 14 para 2(3)(a));

2296 (2) however the money is held (Sch 14 para 2(3)(b));

2297 (3) whether the money was received before or after the order was made (Sch 14 para 2(3)(c)).

But an order under Sch 14 para 2(2) does not take effect in relation to a person until the licensing authority has given the person a copy of the order and (in the case of a bank or other financial institution) has indicated the branches at which it believes money to which the order relates is held: Sch 14 para 2(4). A person is not to be treated as having disobeyed an order under Sch 14 para 2(2) by making a payment of money if the court is satisfied that the person exercised due diligence to ascertain whether it was money to which the order related and failed to ascertain that the order related to it: Sch 14 para 2(5).

4 Legal Services Act 2007 Sch 14 para 2(1).

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1553. Money vesting in licensing authority.

As from a day to be appointed the following provisions have effect¹. The sums of money held by or on behalf of the licensed body² in connection with:

- 808 (1) its activities as a licensed body³;
- 809 (2) any trust of which it is or was a trustee⁴; or
- 810 (3) any trust of which a person who is or was a manager or employee⁵,

and the right to recover or receive them, vest in the licensing authority⁶ if the licensing authority decides that they should do so⁷.

The licensing authority must give the licensed body, and any other person in possession of sums of money to which the above applies a copy of the licensing authority's decision and a notice prohibiting the payment out of those sums⁸. Any right to recover or receive debts due to the licensed body in connection with its business vest in the licensing authority if the licensing authority decides that they should do so⁹.

If the licensing authority takes possession of any sum of money to which the above provisions apply, it must pay it into a special account in the name of the licensing authority or a person nominated on its behalf¹⁰.

1 The Legal Services Act 2007 Sch 14 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensed body' see PARA 1476.

3 Legal Services Act 2007 Sch 14 para 3(1), (2)(a). Schedule 14 para 3(1) applies whether the sums were received by the person holding them before or after the licensing authority's decision: Sch 14 para 3(3).

4 Legal Services Act 2007 Sch 14 para 3(1), (2)(b).

5 Legal Services Act 2007 Sch 14 para 3(1), (2)(c). As to the meaning of 'manager' see PARA 369 note 17.

6 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to when the licensing authority's power of intervention applies see PARA 1552.

7 Legal Services Act 2007 Sch 14 para 3(1). Those sums and that right are held by the licensing authority on trust to exercise the powers conferred by Sch 14 in relation to them and subject to that and to rules under Sch 14 para 6, on trust for the persons beneficially entitled: Sch 14 para 3(4). The licensing authority may make rules governing its treatment of sums vested in it under Sch 14 para 3 or Sch 14 para 4(3): Sch 14 para 6(1). The rules may, in particular, make provision in respect of cases where the licensing authority, having taken such steps to do so as are reasonable in all the circumstances of the case, is unable to trace the person or persons beneficially entitled to any sum vested in the licensing authority under Sch 14 para 3 or Sch 14 para 4(3) (including provision which requires amounts to be paid into or out of any fund maintained by the licensing authority in connection with its compensation arrangements): Sch 14 para 6(2). Such rules are non-statutory and are not set out in this work. As to the meaning of 'compensation arrangements' see PARA 369 note 11.

8 Legal Services Act 2007 Sch 14 para 3(5). A person to whom a notice under Sch 14 para 3(5) is given may apply to the High Court for an order directing the licensing authority to withdraw the notice: Sch 14 para 3(6). An application under Sch 14 para 3(6) must be made within eight days of the licensing authority giving the person notice under Sch 14 para 3(5): Sch 14 para 3(7). The person must give not less than 48 hours' notice of

any application under Sch 14 para 3(6) to the licensing authority and if the notice under Sch 14 para 3(5) gives the name of a solicitor instructed by the licensing authority, to that solicitor: Sch 14 para 3(8). If the court makes the order, it may make any other order it thinks fit with respect to the matter: Sch 14 para 3(9). It is an offence for a person to whom a notice has been given under Sch 14 para 3(5) to pay out sums of money at a time when such payment is prohibited by the notice: Sch 14 para 3(10). As to notices generally see PARA 303 note 11.

9 Legal Services Act 2007 Sch 14 para 4(1), (2). Any sums recovered by the licensing authority by virtue of the exercise of rights vested under Sch 14 para 4(1) vest in the licensing authority and are held by it on trust to exercise the powers conferred by this Sch 14 in relation to them and subject to that and to rules under Sch 14 para 6 (see note 7), on trust for the persons beneficially entitled: Sch 14 para 4(3). The licensing authority must give the licensed body, and any other person who owes a debt to which the order applies, a copy of the licensing authority's decision: Sch 14 para 4(4).

10 Legal Services Act 2007 Sch 14 para 5(1). A person nominated under Sch 14 para 5(1) holds that sum on trust to permit the licensing authority to exercise the powers conferred by Sch 14 in relation to it and subject to that and rules under Sch 14 para 6 (see note 7), on trust for the persons beneficially entitled: Sch 14 para 5(2). A bank or other financial institution at which a special account is kept is under no obligation to ascertain whether it is being dealt with properly: Sch 14 para 5(3).

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1554. Information about money.

As from a day to be appointed the following provisions have effect¹. The licensing authority² may apply to the High Court for an order requiring a person to give the licensing authority:

- 811 (1) information about any money held by the person on behalf of the licensed body, and the accounts in which it is held³; or
- 812 (2) information relevant to identifying any money held by the licensed body or by another person on its behalf⁴.

The High Court may make the order if it is satisfied that there is reason to suspect, in a case within head (1), that the person holds money on behalf of the licensed body and, in a case within head (2), that the person has the information in question⁵.

1 The Legal Services Act 2007 Sch 14 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to when the licensing authority's power of intervention applies see PARA 1552.

3 Legal Services Act 2007 Sch 14 para 7(1)(a). Schedule 14 para 7 is without prejudice to Sch 14 paras 2-6 (see PARA 1553): Sch 14 para 7(3).

4 Legal Services Act 2007 Sch 14 para 7(1)(b).

5 Legal Services Act 2007 Sch 14 para 7(2).

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1555. Notice to produce or deliver documents.

As from a day to be appointed the following provisions have effect¹. The licensing authority² may give notice to the licensed body requiring it to produce or deliver all documents in its possession or under its control in connection with its activities as a licensed body, any trust of which it is or was a trustee or any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee³. The notice may require the documents to be produced:

- 813 (1) to any person appointed by the licensing authority⁴;
- 814 (2) at a time and place to be fixed by the licensing authority⁵.

The person appointed by the licensing authority may take possession of any such documents on behalf of the licensing authority⁶.

1 The Legal Services Act 2007 Sch 14 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to when the licensing authority's power of intervention applies see PARA 1552.

3 Legal Services Act 2007 Sch 14 para 8(1). It is an offence for a person having possession of such documents to refuse, neglect or otherwise fail to comply with a notice under Sch 14 para 8(1): Sch 14 para 8(4). However this does not apply where an application has been made under Sch 14 para 9(1)(a) (see PARA 1556): Sch 14 para 8(5). A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale: Sch 14 para 8(6). The following applies where the licensing authority takes possession of documents or any other property under Sch 14 para 8: Sch 9 para 10(1). On taking possession, it must give a notice to the licensed body and any other person from whom the documents or property were received or from whose possession they were taken: Sch 14 para 10(2). The notice must state that possession has been taken and specify the date on which possession was taken: Sch 14 para 10(3). A person to whom a notice under Sch 14 para 10(2) is given may apply to the High Court for an order directing the licensing authority to deliver the documents or other property to such person as the applicant requires: Sch 14 para 10(4). An application under Sch 14 para 10(4) must be made within eight days of the licensing authority giving the person notice under Sch 14 para 10(2): Sch 14 para 10(5). The person must give not less than 48 hours' notice of the application to the licensing authority and if the notice under Sch 14 para 10(2) gives the name of a solicitor instructed by the licensing authority, to that solicitor: Sch 14 para 10(6). The court may make any order it thinks fit: Sch 14 para 10(7). As to notices generally see PARA 303 note 11. As to the meaning of 'manager' see PARA 369 note 17. As to the standard scale see PARA 571 note 1.

4 Legal Services Act 2007 Sch 14 para 8(2)(a).

5 Legal Services Act 2007 Sch 14 para 8(2)(b). The licensing authority may apply to the High Court for an order as to the disposal or destruction of any document or other property in its possession by virtue of Sch 14 para 8 and the court may make any order it thinks fit: Sch 14 para 12. The licensing authority may take copies of or extracts from any documents in its possession by virtue of Sch 14 para 8: Sch 14 para 13(1). If the licensing authority proposes to deliver such documents to any person, it may make the delivery conditional on the person giving a reasonable undertaking to supply copies or extracts to the licensing authority: Sch 14 para 13(2). Schedule 14 para 13 is subject to any order made by the court under Sch 14 para 10 (see note 3) or Sch 14 para 12: Sch 13 para 13(3).

6 Legal Services Act 2007 Sch 14 para 8(3).

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1556. Order to produce or deliver documents.

As from a day to be appointed the following provisions have effect¹. The High Court may on the application of the licensing authority² make an order for production or delivery:

- 815 (1) in relation to a person required to produce documents³ and the documents the person was required to produce⁴;
- 816 (2) if it is satisfied that there is reason to suspect that documents in relation to which the powers⁵ are exercisable have come into the possession or under the control of some person other than the licensed body, in relation to that person and those documents⁶.

An order for production or delivery is an order requiring a person to produce or deliver documents to any person appointed by the licensing authority, at a time and place specified in the order and authorising the appointed person to take possession of the documents on behalf of the licensing authority⁷. The court may, on the application of the licensing authority, authorise a person appointed by the licensing authority to enter any premises (using such force as is reasonably necessary) to search for and take possession of:

- 817 (a) any documents to which an order for production or delivery relates⁸;
- 818 (b) any property in the possession of or under the control of the licensed body or in the case of an order under head (1), which was in the possession or under the control of that body and has come into the possession or under the control of the person in respect of whom the order is made, which the licensing authority reasonably requires for the purpose of accessing information contained in any such documents⁹,

and to use property obtained under head (b) above for that purpose¹⁰. It may do so on making the order for production or delivery, or at any later time¹¹.

1 The Legal Services Act 2007 Sch 14 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to when the licensing authority's power of intervention applies see PARA 1552.

3 Ie under the Legal Services Act 2007 Sch 14 para 8 (see PARA 1555).

4 Legal Services Act 2007 Sch 14 para 9(1)(a). The licensing authority may apply to the High Court for an order as to the disposal or destruction of any document or other property in its possession by virtue of Sch 14 para 9 and the court may make any order it thinks fit: Sch 14 para 12. The licensing authority may take copies of or extracts from any documents in its possession by virtue of Sch 14 para 8 (see PARA 1555): Sch 14 para 13(1). If the licensing authority proposes to deliver such documents to any person, it may make the delivery conditional on the person giving a reasonable undertaking to supply copies or extracts to the licensing authority: Sch 14 para 13(2). Schedule 14 para 13 is subject to any order made by the court under Sch 14 para 10 (see note 7) or Sch 14 para 12: Sch 13 para 13(3).

5 Ie the powers under the Legal Services Act 2007 Sch 14 para 8 (see PARA 1555).

6 Legal Services Act 2007 Sch 14 para 9(1)(b). As to the meaning of 'licensed body' see PARA 1476.

7 Legal Services Act 2007 Sch 14 para 9(2). The following applies where the licensing authority takes possession of documents or any other property under Sch 14 para 9: Sch 9 para 10(1). On taking possession, it must give a notice to the licensed body and any other person from whom the documents or property were received or from whose possession they were taken: Sch 14 para 10(2). The notice must state that possession has been taken and specify the date on which possession was taken: Sch 14 para 10(3). A person to whom a notice under Sch 14 para 10(2) is given may apply to the High Court for an order directing the licensing authority to deliver the documents or other property to such person as the applicant requires: Sch 14 para 10(4). An application under Sch 14 para 10(4) must be made within eight days of the licensing authority giving the person notice under Sch 14 para 10(2): Sch 14 para 10(5). The person must give not less than 48 hours' notice of the application to the licensing authority and if the notice under Sch 14 para 10(2) gives the name of a solicitor instructed by the licensing authority, to that solicitor: Sch 14 para 10(6). The court may make any order it thinks fit: Sch 14 para 10(7). As to notices generally see PARA 303 note 11.

8 Legal Services Act 2007 Sch 14 para 9(3)(a).

9 Legal Services Act 2007 Sch 14 para 9(3)(b).

10 Legal Services Act 2007 Sch 14 para 9(3).

11 Legal Services Act 2007 Sch 14 para 9(4).

Halsbury's Laws of England/LEGAL PROFESSIONS (VOLUME 65 (2008) 5TH EDITION, PARAS 301-762; VOLUME 66 (2009) 5TH EDITION, PARAS 763-1558)/8. ALTERNATIVE BUSINESS STRUCTURES/(4) OWNERSHIP AND REGULATION OF LICENSED BODIES/(vi) Regulation of Licensed Bodies/1557. Communications redirection order.

1557. Communications redirection order.

As from a day to be appointed the following provisions have effect¹. The High Court, on the application of the licensing authority², may from time to time make a communications redirection order³.

Where a communications redirection order has effect, the licensing authority or the person appointed by the licensing authority may take possession or receipt of the communications redirected in accordance with the order⁴. Where a communications redirection order is made the licensing authority must pay to the designated payee⁵ the like charges (if any) as would have been payable for the redirection of the communications to which the order relates if the addressee had permanently ceased to occupy or use the premises or other destination of the communications and had applied to the designated payee to redirect the communications as mentioned in the order⁶.

The High Court may, on the application of the licensing authority, authorise the licensing authority, or a person appointed by it, to take such steps as may be specified in the order in relation to any website purporting to be or have been maintained by or on behalf of the licensed body, if the High Court is satisfied that the taking of those steps is necessary to protect the public interest or the interests of clients (or potential or former clients) of the licensed body⁷.

1 The Legal Services Act 2007 Sch 14 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to when the licensing authority's power of intervention applies see PARA 1552.

3 Legal Services Act 2007 Sch 14 para 11(1). A communications redirection order is an order that specified communications to the licensed body are to be directed, in accordance with the order, to the licensing authority or any person appointed by the licensing authority: Sch 14 para 11(2). 'Specified communications' means communications of such description as are specified in the order: Sch 14 para 11(3)(a). The descriptions of communications which may be so specified include:

2298 (1) communications in the form of a postal packet (Sch 14 para 11(3)(b)(i));

2299 (2) electronic communications (Sch 14 para 11(3)(b)(ii));

2300 (3) communications by telephone (Sch 14 para 11(3)(b)(iii)).

A communications redirection order has effect for such time not exceeding 18 months as is specified in the order: Sch 14 para 11(4).

4 Legal Services Act 2007 Sch 14 para 11(5). The licensing authority may apply to the High Court for an order as to the disposal or destruction of any document or other property in its possession by virtue of Sch 14 para 8 (see PARA 1555) and the court may make any order it thinks fit: Sch 14 para 12. The licensing authority may take copies of or extracts from any documents in its possession by virtue of Sch 14 para 11: Sch 14 para 13(1). If the licensing authority proposes to deliver such documents to any person, it may make the delivery conditional on the person giving a reasonable undertaking to supply copies or extracts to the licensing authority: Sch 14 para 13(2). Schedule 14 para 13 is subject to any order made by the court under Sch 14 para 10 (see PARA 1556 note 7) or Sch 14 para 12: Sch 13 para 13(3).

5 'Designated payee' means in the case of an order relating to postal packets, the postal operator concerned and in any other case, the person specified in the order as the designated payee: Legal Services Act 2007 Sch 14 para 11(7). As to the meanings of 'postal operator' and 'postal packet' see the Postal Services Act 2000 s 125(1); and **POST OFFICE**.

6 Legal Services Act 2007 Sch 14 para 11(6).

7 Legal Services Act 2007 Sch 14 para 11(8).

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1558. Trusts.

As from a day to be appointed the following provisions have effect¹. If the licensed body² is a trustee of any trust, the licensing authority³ may apply to the High Court for an order for the appointment of a new trustee in substitution for it⁴. If a person who is a manager⁵ or employee of the licensed body is a trustee of any trust in that person's capacity as such a manager or employee, the licensing authority may apply to the High Court for an order for the appointment of a new trustee in substitution for that person⁶.

1 The Legal Services Act 2007 Sch 14 is to be brought into force by order made by the Lord Chancellor under s 211(2) as from a day to be appointed. At the date at which this volume states the law no such day had been appointed. As to the Lord Chancellor see PARA 301 note 1.

2 As to the meaning of 'licensed body' PARA 1476.

3 As to the meaning of 'licensing authority' see PARA 1478 and as to licensing authorities generally see PARA 1478 et seq. As to when the licensing authority's power of intervention applies see PARA 1552.

4 Legal Services Act 2007 Sch 14 para 14(1).

5 As to the meaning of 'manager' see PARA 369 note 17.

6 Legal Services Act 2007 Sch 14 para 14(2).